(26,890 TO 26,894)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 804.

PETER SCHAEFER, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

No. 805.

PAUL VOGEL, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

No. 806.

LOUIS WERNER, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

No. 807.

MARTIN DARKOW, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

No. 808.

HERMAN LEMKE, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 5, 1919.

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Docket Entries in the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

THE UNITED STATES

vs.

PETER SCHAEFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

Francis Fisher Kane.
William A. Gray.

(Making and Conveying False Reports to Promote Success of Enemy, etc. Wilfully Obstructing Recruiting and Enlistment Service. Conspiracy to make False Reports, etc.)

Dec. 8, 1917.		True Bill.
" 17,	"	Demurrer of Peter Schaefer filed.
" 17,	"	Demurrer of Paul Vogel filed.
" 17,	"	Demurrer of Louis Werner filed.
" 17,	"	Demurrer of Martin Darkow filed.
" 17,	"	Demurrer of Herman Lemke filed.
Jan. 11, 1918.		Argued sur demurrers.
" 23,	"	Opinion, Dickinson J., overruling demurrers of defendants filed.
" 24,	"	Exceptions by Paul Vogel, Peter Schaefer, Louis Werner, Martin Darkow and Herman Lemke and Order allowing same filed.
Apr. 15, 1918.		Petition for Warrant of arrest of material witnesses, filed.
" 15,	"	Order of Court granting prayer of petition, filed.
" 15,	"	Warrant for Arrest exit.
" 26,	"	On motion of District Attorney, bail of Otto Seiffert and Robert Szepanscky, material witnesses, fixed at $1000 each for their attendance at June Term, 1918.
" 27,	"	Order of Court to release Otto Seiffert and Robert Szepanscky, material witnesses, on own recognizance, filed.
" 27,	"	Recognizance of Otto Seiffert in One Thousand Dollars for his appearance on June 10, 1918, taken, acknowledged and filed.

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Apr. 27, 1918.		Recognizance of Robert Szepanscky in One Thousand Dollars for his appearance on June 10, 1918, taken, acknowledged and filed.

May 27, 1918. Subpœna to E. M. Lemke, U. S. witness, returne "served" and filed.

June 12, 1918. Motion for continuance to September Term, 191 granted.

Sept. 20, 1918. Subpœna to Reginald Schroeder et al., U. S. wi nesses, returned "served" and filed.

" 23, " Jury called. See minutes.

" 23, " Witnesses sworn.

" 24, " Trial continues—Witnesses sworn.

" 25, " Trial continues—Witnesses sworn.

" 26, " Trial continues—Witnesses sworn.

" 27, " Trial continues.

" 27, " Verdict: The jurors aforesaid upon their oath and affirmations respectfully do say that the find:

Peter Schaefer: Not guilty—counts one to eigh inclusive.
Guilty—count nine.

Paul Vogel: Not guilty—counts one to eigh inclusive.
Guilty—count nine.

Louis Werner: Guilty—counts one and two.
Not guilty—count three.
Guilty—count four.
Not guilty—counts five, six, seve and eight.
Guilty—count nine.

Martin Darkow: Guilty—count one.
Not guilty—count two.
Guilty—count three.
Not guilty—count four.
Guilty—counts five and six.
Not guilty—counts seven an eight.
Guilty—count nine.

Herman Lemke: Not guilty—counts one to eigh inclusive.
Guilty—count nine.

Sept. 27, 1918. Order to take recognizance of Peter Schaefer file

" 27, " Justification of surety as to Peter Schaefer filed.

" 27, " Recognizance of Peter Schaefer with U. S. Fidelit and Guaranty Co., surety, in $10,000.00 for d fendant's appearance September 28, 1918 an thereafter, etc., filed.

" 27, " Order to take recognizance of Herman Lemke file

" 27, " Justification of surety filed.

" 27, " Recognizance of Herman Lemke with Carl Weld surety, in $10,000.00 for defendant's appearanc September 28, 1918, filed.

" 27, " Order to take recognizance of Martin Darkow file

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Sept.	27,	1918. Justification of surety filed.
"	27,	" Recognizance of Martin Darkow with Charles Saake, surety, in Ten Thousand Dollars for defendant's appearance September 28, 1918, and thereafter, filed.
"	27,	" Order to take recognizance of defendant Louis Werner, filed.
"	27,	" Justification of surety, filed.
"	27,	" Recognizance of Louis Werner with Remiguis Weiss, Adolf Bode, Rosa Fleer surety in Ten Thousand Dollars for defendant's appearance September 28, 1918, and thereafter, filed.
"	27,	" Order to take recognizance of Paul Vogel filed.
"	27,	" Justification of surety, filed.
"	27,	" Recognizance of Paul Vogel with Barbara Ruder, surety, in $10,000.00 for defendant's appearance September 28, 1918, and thereafter, filed.
Nov.	13,	1918. Reasons in support of Motion for New Trial, filed.
"	15,	" Argued sur motion for New Trial.
Dec.	9,	1918. Opinion, Dickinson J., discharging motions in arrest of Judgment and for New Trials filed.
"	18,	" Sentence as to Peter Schaefer: Imprisonment Mercer County Jail, Trenton, N. J., for one year from this date.
"	18,	" Justification of surety as to Gustave A. Kirchner, filed.
"	18,	" Order of Court to take recognizance of Peter Schaefer in $5000.00 filed.
"	18,	" Recognizance of Peter Schaefer, with Gustave Kirchner surety, in $5000 filed.
"	18,	" Sentence as to Paul Vogel: Imprisonment Mercer County Jail, Trenton, N. J., for one year from this date.
"	18,	" Order of Court to take recognizance of Paul Vogel with Barbara Ruder, surety in $5000, filed.
"	18,	" Justification of Barbara Ruder, surety, filed.
"	18,	" Recognizance of Paul Vogel, with Barbara Ruder, surety in $5000.00 filed.
"	18,	" Sentence as to Louis Werner: Imprisonment United States Penitentiary, Atlanta, Georgia, for five years from this date.
"	18,	" Order of Court to take recognizance of Louis Werner with Rosa Heer, Hedwig Traeger, Adolph Bode and Otto Zentgraf, surities, in $10,000.00, filed.
"	18,	" Justification of surety of Rosa Heer filed.
"	18,	" Justification of surety of Hedwig Traeger filed.
"	18,	" Justification of surety of Adolf Bode filed.

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Dec. 18, 1918. Justification of surety of Otto Zentgraf
" 18, " Recognizance of Louis Werner with Hedwig Traeger, Adolf Bode, and graf surety in $10,000.00 filed.
" 18, " Sentence as to Martin Darkow: Impr S. Penitentiary Atlanta, Ga., for fiv this date.
" 18, " Order of Court to take recognizance Darkow with Otto Zentgraf, Rosa H Traeger, Jacob Sturin, Frederick surety, filed.
" 18, " Justification of surety of Jacob Sturin
" 18, " Justification of surety of Frederick filed.
" 18, " Recognizance of Martin Darkow with graf, Jacob Sturin, Rosa Heer, Hed Frederick F. Oerlein and Augu surety, in Ten Thousand Dollars, fi
" 18, " Sentence as to Herman Lemke: Impr U. S. Penitentiary Atlanta, Ga., fo from this date.
" 18, " Order of Court to take recognizance Lemke with Charles Saake surety filed.
" 18, " Justification of Surety of Charles Saa
" 18, " Recognizance of Herman Lemke w Saake, surety, in $5000.00 filed.
" 18, " Bill of Exceptions filed.
" 18, " Order of Court sealing Bill of Excepti
" 18, " Assignments of Error as to Peter Scha
" 18, " Assignments of Error as to Paul Vogel
" 18, " Assignments of Error as to Louis Wer
" 18, " Assignments of Error as to Martin Dar
" 18, " Assignments of Error as to Herman L
" 18, " Petition of Peter Schaeffer for Writ of
" 18, " Order of Court granting petition for W filed.
" 18, " The sum of $250 deposited by Peter S of defendants, as security for costs Error to U. S. Supreme Court.
" 18, " Writ of Error allowed as to Peter S copy thereof lodged in Clerk's office party.
" 18, " Citation as to Peter Schaeffer allowed

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Dec. 18, 1918. Petition of Paul Vogel for Writ of
" 18, " Order of Court granting Petition for ror filed.

"	18,	"	Writ of Error allowed as to Paul Vogel and copy thereof lodged in Clerk's office for adverse party.
"	18,	"	Citation as to Paul Vogel allowed and issued.
"	18,	"	Petition of Louis Werner for Writ of Error filed.
"	18,	"	Order of Court granting petition for Writ of Error filed.
"	18,	"	Writ of Error as to Louis Werner allowed and copy thereof lodged in Clerk's office for adverse party.
"	18,	"	Citation as to Louis Werner allowed and issued.
"	18,	"	Petition of Martin Darkow for Writ of Error filed.
"	18,	"	Order of Court granting prayer of petition filed.
"	18,	"	Writ of Error allowed as to Martin Darkow and copy thereof lodged in Clerk's office for adverse party.
"	18,	"	Citation as to Martin Darkow allowed and issued.
"	18,	"	Petition for Writ of Error of Herman Lemke, filed.
"	18,	"	Order of Court granting prayer of Petition filed.
"	18,	"	Writ of Error allowed as to Herman Lemke and copy thereof lodged in Clerk's office for adverse party.
"	18,	"	Citation as to Herman Lemke allowed and issued.
"	23,	"	Affidavit of service of Citation as to Peter Schaefer.
"	23,	"	Affidavit of service of Citation as to Paul Vogel.
"	23,	"	Affidavit of service of Citation as to Louis Werner.
"	23,	"	Affidavit of service of Citation as to Martin Darkow.
"	23,	"	Affidavit of service of Citation as to Herman Lemke.
"	28,	"	Præcipe for transcript of record filed.

6 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the District Court of the United States for the Eastern District of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between the United States of America, plaintiff, and Peter Schaefer, defendant, a manifest error hath happened, to the great damage of the said Peter Schaefer, defendant, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and pro-

ceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the City of Washington within thirty days, in the said Supreme Court of the United States, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, at Philadelphia, the 18th day of December, in the year of our Lord one thousand nine hundred and eighteen.

[Seal of the District Court of the United States, E. D. Penna.]

GEORGE BRODBECK,
Clerk of the District Court of the United States.

Allowed by the Court:
DICKINSON, *D. J.*

7 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the District Court of the United States for the Eastern District of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between the United States of America, plaintiff, and Paul Vogel, defendant, a manifest error hath happened, to the great damage of the said Paul Vogel, defendant, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the City of Washington within thirty days, in the said Supreme Court of the United States, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, at Philadelphia, the 18th day of

ecember, in the year of our Lord one thousand nine hundred and ighteen.

[Seal of the District Court of the United States, E. D. Penna.]

GEORGE BRODBECK,
Clerk of the District Court of the United States.

Allowed by the Court:
DICKINSON, *D. J.*

s UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the District Court of the United States for the Eastern District of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between the United States of America, plaintiff, and Louis Werner, defendant, a manifest error hath happened, to the great damage of the said Louis Werner, defendant, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the City of Washington within thirty days, in the said Supreme Court of the United States, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, at Philadelphia, the 18th day of December, in the year of our Lord one thousand nine hundred and eighteen.

[Seal of the District Court of the United States, E. D. Penna.]

GEORGE BRODBECK,
Clerk of the District Court of the United States.

Allowed by the Court:
O. B. DICKINSON, *D. J.*

9 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the District Court of the United States for the Eastern District of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you or some of you, between the United States of America, plaintiff, and Martin Darkow, defendant, a manifest error hath happened, to the great damage of the said Martin Darkow, defendant, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the City of Washington within thirty days, in the said Supreme Court of the United States, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, at Philadelphia, the 18th day of December, in the year of our Lord one thousand nine hundred and eighteen.

[Seal of the District Court of the United States, E. D. Penna.]

GEORGE BRODBECK,
Clerk of the District Court of the United States.

Allowed by the Court:
DICKINSON, *D. J.*

10 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the District Court of the United States for the Eastern District of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between the United States of America, plaintiff, and Herman Lemke, defendant, a manifest error hath happened, to the great damage of the said Herman Lemke, defendant, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in

his behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the City of Washington within thirty days, in the said Supreme Court of the United States, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, at Philadelphia, the 18th day of December, in the year of our Lord one thousand nine hundred and eighteen.

[Seal of the District Court of the United States, E. D. Penna.]

GEORGE BRODBECK,
Clerk of the District Court of the United States.

Allowed by the Court:
DICKINSON, *D. J.*

11 District Court of the United States, Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

UNITED STATES OF AMERICA

vs.

PETER SCHAEFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

Indictment.

(Filed Dec. 8, 1917.)

Count 1.

The Grand Inquest of the United States of America, inquiring in and for the Eastern District of Pennsylvania, upon their respective oaths and affirmations, respectively do present:—

That on all the dates hereinafter mentioned, the "Philadelphia Tageblatt" and the "Philadelphia Sonntagsblatt" were newspapers printed and published in the German language in Philadelphia by the Philadelphia Tageblatt Publishing Association, a corporation incorporated and existing under the laws of the State of Pennsylvania; that on the said dates, one Peter Schaefer was president, and one Paul Vogel was treasurer of the said Corporation; that on said dates

one Louis Werner was chief editor, one Martin Darkow was
12 managing editor, and one Herman Lemke was business manager of the said newspapers.

That on the dates hereinafter mentioned, the United States was at war with the Imperial German Government.

That on the dates hereinafter mentioned, at Philadelphia in the Eastern District of Pennsylvania, the said Peter Schaefer, Paul Vogel, Louis Werner, Martin Darkow and Herman Lemke, hereinafter called the defendants, did knowingly, wilfully and unlawfully make and convey false reports and statements, with intent to promote the success of the enemies of the United States, to wit, the said Imperial German Government.

(*a*) In that the said defendants did, on June 24, 1917, wilfully cause to be printed, published and circulated in and through the columns of the said "Philadelphia Sonntagsblatt" a report purporting to be a dispatch from London, dated June 23, in the German language, a true and correct copy of which report with the captions over the same, marked (1), is set forth on a separate sheet of paper facing this page, and is hereby incorporated into this count and made a part hereof; and a true and correct translation of which report and captions into English is as follows:

(Here follows reproduction of slip marked p. 12.)

Die Krisis.

In Rußland iſt ſie mit ſchnellen Schritten im Anzug.

Die Coalitions-Regierung wird wahrſcheinlich keinen langen Beſtand mehr haben.

Ihre Haltung in der auswärtigen Politik wird verdammt.

London, 23. Juni. Der Petersburger Correſpondent des Chronicle telegraphirt heute, daß eine große Criſis in Rußland im Anzug ſei. (Damit meint er offenbar, daß die unſichere und unentſchloſſene Coalitions-Regierung bald abgewirthſchaftet haben werde. Sie ſcheint der Inſtruktion des Arbeiter- und Soldatenrathes, die Alliirten zu veranlaſſen, ihre Kriegsziele zu revidiren, nur widerwillig Folge zu leiſten. Das werden ſich die Arbeiter nicht mehr lange gefallen laſſen. Höchſt bezeichnend iſt auch, daß über den großen allgemeinen Congreß der Arbeiter- und Soldatendelegaten in vier Tagen nicht ein Wort berichtet worden iſt, Offenbar weil ſein Verhalten den Alliirten nicht gefällt.) Der Correſpondent des Chronicle citirt einen Aufſatz aus Maxim Gorki's Zeitung „Neues Leben", welcher ſagt, daß man in der ganzen Welt verſtehen ſolle, Rußland weiſe die progreſſiven Kriegsziele der Alliirten zurück. Der Correſpondent ſieht darin ein Anzeichen, daß die Sozialiſten Rußlands nicht mehr lange zuwarten werden.

(h. 12)

Bestätigt.

Im Haag, 9. Juli. Mit der Eröffnung der allgemeinen Debatte im Reichstag steht Deutschland heute einer der ernstesten Regierungskrisen seit Beginn des Krieges gegenüber. Sämmtliche unruhigen Elemente, die von Zeit zu Zeit sich vermehrt haben, haben jetzt gemeinsame Sache gemacht. Es wird der geschicktesten Handhabung der Situation bedürfen, um einen Umsturz erster Größe zu verhindern. Es wird von Berlin berichtet, daß der Reichskanzler Dr. von Bethmann-Hollweg, wahrscheinlich heute, spätestens aber morgen, seine lange erwartete Friedensrede halten wird.

Die Ursachen der drohend sich gestaltenden Krisis werden, wie folgt, angegeben:

1. Die allgemeine Agitation zur Herbeiführung innerpolitischer Reformen.

2. Die zunehmende Erbitterung zwischen den Junkern und Sozialisten in Verbindung mit den Friedensbedingungen der Centralmächte.

3. Die zunehmende Unruhe im Volke über den Eintritt der Vereinigten Staaten in den Krieg.

Hier wird fast allgemein der Ansicht Ausdruck gegeben, daß der Rücktritt des Reichskanzlers, Dr. von Bethmann-Hollweg, unvermeidlich ist. Der Ernst der Lage geht auch daraus hervor, daß der Chef des Großen Generalstabes, Feldmarschall von Hindenburg, und sein Assistent, der General-Quartiermeister von Ludendorff, von dem östlichen Kriegsschauplatze nach Berlin geeilt sind, um mit dem Kaiser und dem Kanzler zu conferiren. Die Rede des einflußreichen Centrumsführers, des Reichstagsabgeordneten Erzberger, in welcher er im Namen seiner Partei sich nicht allein für sofortige Wahlreformen in Preußen, sondern auch im ganzen Reiche erklärte, hat nicht wenig dazu beigetragen, die Krisis noch zu verschärfen. Zu gleicher Zeit hatte Erzberger sich über Friedensschluß mit irgend einem Lande ausgesprochen, welches willens ist, ohne Annexion und Kriegsentschädigung Frieden zu schließen. Sollte der deutsche Reichskanzler außer Stande sein, den Sturm zu überstehen, so dürfte der deutsche Vice-Reichskanzler, Dr. Karl Helfferich, an seine Stelle treten.

(12-2)

The Crisis.

ancing in Russia with Rapid Strides. The Coalition Government Will Probably Not Last Long.

Its Position in Foreign Affairs is Condemned.

don, June 23.—The Petrograd correspondent of the Chronicle telegraphs today that a great crisis is in progress in Russia. (By that he means apparently that the unstable and weak coalition government will soon be got rid of. It seems y unwillingly the instructions of the Workmen's and Soldiers' il to request the allies to revise their war aims. The workmen ot stand for this much longer. It is highly significant too that word has been reported for four days about the great general ss of the Workmen's and Soldiers' delegates; apparently beits behavior does not please the allies.)

e correspondent of the Chronicle quotes an extract from Maxim 's newspaper 'New Life' which says that people all over the are to understand that Russia rejects the aggressive war aims allies. The Correspondent sees a sign in this that the social- Russia will not wait much longer.

hich said report was false, as the defendants then and there knew, in this, that an important statement in the original de- which the report purported to reproduce was omitted, to wit, posal by Maxim Gorky that Russia wage a separate war against any.

) In that the said defendants did on July 10, 1917, wilfully to be printed, published and circulated in and through the col- of the said "Philadelphia Tageblatt" a report purporting to be a tch from the Hague dated July 9, in the German language, a and correct copy of which report with the caption over the same ked (2), is set forth on a separate sheet of paper facing this page, is hereby incorporated into this count and made a part hereof; a true and correct translation of which report and caption into lish is as follows:

(Here follows reproduction of slip marked p. 12*a*.)

14 Confirmed.

The Hague, July 9.—With the opening of the general debate in the Reichstag, Germany faces one of the most serious cabinet crises since the beginning of the war. All the restless elements, which have increased from time to time, have now made common cause. The situation will require the most clever handling to prevent a great downfall. Berlin reports that the Chancellor, Dr. Von Bethmann-Hollweg, will perhaps today, but at latest tomorrow make his long expected speech for peace. The causes of the crisis, now threatening, are given as follows:

1. The general agitation for bringing about internal political reform.

2. The increasing bitterness between the Junkers and the Socialists in connection with the terms of peace of the Central Powers.

3. The increasing unrest of the populace over the entrance of the United States into the war.

Expression is being given in all quarters here to the opinion that the retirement of the Imperial Chancellor, Dr. von Bethmann-Hollweg, is inevitable. The seriousness of the situation is also apparent from the fact that Field Marshal Hindenburg, the Chief of the great General Staff, and his assistant, Quartermaster General von Ludendorff, have hurried to Berlin from the East front to confer with the Kaiser and the Chancellor. The sharpness of the crisis has been heightened not a little by the speech of the influential leader of the Centre in the Reichstag, Deputy Erzberger, in which, in the name of his party, he demanded immediate electoral reforms not only in Prussia but in the whole Empire. At the same time Erzberger urged the conclusion of a peace with any country that would be willing to make peace without annexations or indemnities.

15 If the German Imperial Chancellor is not able to survive the storm, his place will probably be taken by the Vice-Chancellor, Dr. Karl Helfferich.

Which report was false, as the defendants then and there well knew, in this that it stated: "Die zunehmende Unruhe im Volke über den eintritt der Vereinigten Staaten in den Krieg" (the increasing unrest of the populace over the entrance of the United States into the war) was one of three causes for the threatening crisis in Germany, whereas the dispatch from the Hague which the report purported to reproduce, in truth and in fact stated: "Die zunehmende Unruhe im Volke uber den Fehlschlag des Tauchboot Krieges das ende des Konflikts herbeizuführen, und den Eintritt der Vereinigten Staaten in den Krieg" (the increasing unrest of the populace over the failure of the submarine war to force an end to the conflict and over the entrance of the United States into the war) was one of the causes of the said threatening crisis, the defendants thus omitting from their reproduction of the said dispatch a material portion of the same.

(*c*) In that the said defendants did on July 20, 1917, wilfully cause to be printed, published and circulated in and through the

Drunter u. drüber.

In Rußland ſcheint ſich eine neue Revolution vorzubereiten.

Regierungsſitz ſoll von Petersburg nach Moskau verlegt werden.

Noch ein Miniſter reſignirt und Attentat gegen Botſchafter Francis gemeldet.

London, 19. Juli. Die Exchange Telegraph Co. meldet, daß ein Verſuch gemacht wurde, einen Eiſenbahnzug auf welchem der amerikaniſche Botſchafter David R. Francis ſich auf der Heimreiſe befand, mit Dynamit in die Luft zu ſprengen. Das Attentat iſt mißlungen, doch hatte der Zug eine vielſtündige Verſpätung, da die Geleiſe aufgeriſſen waren. (Dies iſt das erſte mal daß man erfährt der amerikaniſche Botſchafter befände ſich auf der Heimreiſe. Vielleicht handelte es ſich lediglich um die Heimfahrt nach dem Sitze ſeines Poſtens.)

Noch einer.

St. Petersburg, 19. Juli. Der Juſtizminiſter der proviſoriſchen Regierung, Tereſchtſchenkow, hat gleichfalls ſeine Reſignation überreicht. Er gehörte gleichfalls der Cadettenpartei, ſo daß fünf Cadettenminiſter bereits ausgeſchieden ſind. Es wird bereits davon gemunkelt, daß eine Reconſtruction des ganzen Cabinets im Zuge ſei, das ſich lediglich aus Mitgliedern der ſocialdemokratiſchen Parteien rekrutiren wird.

Angeblich unterdrückt.

London, 19. Juli. Eine heute aus der ruſſiſchen Hauptſtadt eingetroffene Depeſche meldet, daß die Regierung vollſtändig die Stadt controlirt, daß aber Verſuche gemacht werden, ein anderes Coalitions-Miniſterium zu bilden. Die Stadt befindet ſich unter Kriegsrecht. Agitatoren ſind immer noch bemüht, eine Gegenrevolution in Gang zu bringen.

Die Zahl der Opfer der letzten Unruhen wird auf 500 angegeben.

Columns of the said "Philadelphia Tageblatt," a report purporting to be two dispatches from London, with editorial comment, and one from Petrograd, dated July 19, in the German language, a true and correct copy of which report with the captions over the same, marked (3), is set forth on a separate sheet of paper facing this page, and is hereby incorporated into this count and made a part hereof; a true and correct translation of which report and captions into English is as follows:

16 Ups and Downs.

There Seems to be a New Revolution Coming in Russia.

The Seat of the Government is to be Moved from Petersburg to Moscow.

Another Minister Resigns.

Attempt Upon Ambassador Francis Reported.

London, July 19.—The Exchange Telegraph Company reports that an attempt was made to blow up with dynamite a railroad train upon which the American Ambassador, David R. Francis, was travelling on his way home. The attempt failed, but the train was delayed many hours as the rails were torn up. (This is the first time that it has been reported that the American Ambassador was returning home; perhaps it refers merely to returning to his post.)

Another.

St. Petersburg, July 19.—The Minister of Justice of the provisional government, Tereveizew has likewise tendered his resignation; he likewise belongs to the Cadet party, so that five Cadet Ministers have now resigned. It is already common talk that a reconstruction of the whole cabinet is in progress, which will be recruited solely from the members of the Social-Democrat party.

17 Apparently Suppressed.

London, July 19.—A dispatch which has been received today from the Russian capital reports that the government is in full control of the city, but that attempts are being made to form another coalition ministry. The city is under martial law; agitators are still attempting to bring about a counter-revolution.

The number of victims of the last disturbance is reported at about five hundred.

(Here follows reproduction of slip marked page 17.)

Which said report was false, as the defendants then and there well knew, in this, that the report of the original dispatches from which the said report was reproduced by the defendants, in the said "Philadelphia Tageblatt," contained a certain paragraph, a true and correct copy of which in the German language is as follows:

"Es sind definitive Beweise dafür gefunden worden, dass Agenten im Solde der deutschen Regierung unter der Garuison von St. Petersburg an der Arbeit gewesen sind, sie zur Meuterei aufreizten und Mitglieder der Executive der Delegaten der Arbeiter und Soldaten zur Unzufriedenheit mit der Regierung veranlassten."

and a true and correct translation of which into English is as follows:

"Definite proofs have been found that agents in pay of the German Government were at work among the garrison of St. Petersburg, urged them to mutiny and provoked members of the committee of workers and soldiers delegates to dissatisfaction with the government."

and which paragraph was wilfully omitted by the defendants in their said reproduction of the dispatches from the dispatch from London, July 19, last above mentioned.

18 (*d*) In that the said defendants did, on July 25, 1917, wilfully cause to be printed, published and circulated in and through the columns of the said "Philadelphia Tageblatt," a report purporting to be a dispatch from Washington, dated July 24, in the German language, a true and correct copy of which report with the caption over the same, marked (4), is set forth on a separate sheet of paper facing this page, and is hereby incorporated into this count and made a part hereof; a true and correct translation of which report and caption into English is as follows:

What Washington Hopes.

Washington, July 24.

Whether a catastrophe may be averted in Russia by the appointment of Kerensky as dictator, can only be determined after a week has passed; it will take that long, in the opinion of local experts, before it can be determined whether the Russian army can be made fit for a new resistance and so disposed that they may be able to hinder a further advance of the German allies. If Kerensky rules with an iron hand and forces a re-establishment of discipline, then Russia will survive the period of danger, even if it should have to lose its advanced positions.

In official circles no one believes in a united Russia as long as the proposed conference of the entente for revision of war aims has not taken place; that will take place in the next month. The date of the meetings of the conference has not yet been announced.

The Russian Government insists on the holding of the conference in order that every Russian soldier may know for what he is fighting. In the invitation of the Russian Government it was explained

Was Waſhington hofft.

Waſhington, 24. Juli. Ob ſich in Rußland durch die Ernennung Kerenſky's zum Diktator eine Cataſtrophe abwenden laſſen wird, dürfte ſich erſt in einer Woche feſtſtellen laſſen. Es wird nach Anſicht hieſiger Sachverſtändiger ſolange dauern, bis ſich feſtſtellen läßt, ob die ruſſiſchen Armeen zu neuem Widerſtande veranlaßt und ſo vertheilt werden können, daß ſie ein weiteres Vordringen der deutſchen Verbündeten verhindern können. Wenn Kerenſky mit eiſerner Hand regiert und eine Wiederherſtellung der Disciplin erzwingt, ſo wird Rußland die Gefahr-Periode überdauern, wenn es auch ſeine vorgeſchobenen Stellungen einbüßen dürfte.

In amtlichen Kreiſen glaubt man an kein geeinigtes Rußland, ſolange nicht die vorgeſchlagene Conferenz der Entente zur Reviſion der Kriegsziele ſtattgefunden hat. Das wird im nächſten Monat geſchehen. Das Datum der Verhandlungen der Conferenz iſt noch nicht bekannt gegeben worden.

Die ruſſiſche Regierung beſteht auf Abhaltung der Conferenz, damit jeder ruſſiſche Soldat erfährt, wofür er kämpft. In der Einladung der ruſſiſchen Regierung war erklärt worden, daß ſie gegen Annexionen und gegen Kriegsentſchädigungen iſt, wie man ſie gewöhnlich auslegt, und daß Rußland aus dieſem Grunde um Reviſion einiger Kriegsziele erſuchen würde, wie ſie von den Alliirten bekannt gegeben wurden.

Sollte Kerenſky im Stande ſein, in Rußland die Ordnung wiederherzuſtellen und der deutſchen Offenſive Einhalt zu thun, ſo muß die Conferenz den Vorſchlägen und Anträgen Rußland's die größte Bedeutung beilegen.

Beamte der hieſigen ruſſiſchen Botſchaft erklärten heute, ſie hätten Depeſchen erhalten, aus denen hervorgehen, daß Premierminiſter Kerenſky der Meuterei der Truppen an der Front zum größeren Theile ein Ende gemacht habe. Es wird hier gehofft, daß es Kerenſky gelingen wird, Herr der geſammten Situation zu werden. Die Depeſchen der amerikaniſchen Botſchaft in St. Petersburg treffen immer noch mit großer Verſpätung ein und geben infolgedeſſen kein klares Bild der Lage.

(h.19)

that it is against annexations and against war indemnities as they are usually understood, and that Russia, for this reason,
19 would ask for a revision of some of the war aims as they have been announced by the allies.

Should Kerensky be able to restore order in Russia and put a stop to the German offensive, then the conference must give great weight to Russia's proposals and offers.

Officials of the local Russian Embassy declared today they had received dispatches from which it is evident that Premier Kerensky has, for the most part put an end to the mutiny of the troops at the front. It is hoped here that Kerensky will succeed in becoming master of the whole situation. The dispatches of the American Embassy in St. Petersburg continue to arrive only after great delay, and therefore, do not give a clear picture of the situation.

(Here follows reproduction of slip marked p. 19.)

Which said report was false, as the defendants then and there well knew, in this, that the report of the original dispatch from which the said report was reproduced by the defendants, in said "Philadelphia Tageblatt," contained certain paragraphs, a true and correct copy of which in the German language is as follows:

"Die Tatsache, dass Massenverhaftungen von Armee-sowohl wie Marine-Offizieren gemacht werden, gilt als ein hoffnungsvolles Zeichen. Es gilt als sicher, dass dass deutsche Gold mit vollen Händen verteilt worden ist und die Verräter zur Verantwortung gezogen werden können, eine Gegen-revolution verhindert and die Situation gerettet werden kann. Auch erscheint die Offenheit ermutigen, mit welcher Kerensky und seine Gehilfen die chaotischen Zustände an der ganzen Front eingestanden haben. Ihre Warnungen werden sicherlich eine gute Wirkung sowohl auf das russische Volk wie auf die Soldaten an der Front hervorrufen."

"Premier Minister Lloyd George hat vor einiger Zeit die Erklärung abegegeben, dass Gross-Britannien Willens wäre, in der offensten Weise die gesammton Friedensbedingungen zu erörtern. Wenn auf der Konferenz ein geeinigtes Russland vertreten sein sollte, so ist es sehr wahrscheinlich, dass seine Forderungen ein grosses Gewicht haben werden."

and a true and correct translation of which into English is as follows:

"The fact that arrests en masse of army and navy officers are being made, is thought a hopeful sign. It is accepted as certain that German gold is being scattered with full hands and the the traitors can be brought to account, a counter-revolution prevented and the situation saved. The openness with which Kerensky and his aids have withstood the chaotic conditions on the whole front, also appears encouraging. Their warnings will surely have a good effect on the Russian people as well as on the soldiers at the front."

"Prime Minister Lloyd George some time ago made the statement that Great Britain was willing to publish the complete conditions of peace in the frankest manner. If a united Russia should be represented in the conference, it is very probable that its demands will have great weight."

which paragraphs were omitted by the defendants in reproducing the said report.

(*e*) In that the said defendants did, on July 25, 1917, wilfully cause to be printed, published and circulated in and through the columns of the said "Philadelphia Tageblatt," a report purporting to be a dispatch from Washington, dated July 24, in the German language, a true and correct copy of which report with the captions over the same, marked (5), is set forth on a separate sheet of paper facing this page, and is hereby incorporated into this count and made a part hereof; a true and correct translation of which report and captions into English is as follows:

(Here follows reproduction of slip marked p. 21.)

Serbien.

Die Kastelbinder weisen sich an die Ver. Staaten um Hilfe gegen Oesterreich's Ausbeutung.

Behält sich Geltendmachung von Entschädigungsansprüchen vor.

Washington 24. Juli. Die serbische Gesandtschaft in Paris hat sich in einem Appell an die Vereinigten Staaten gewandt, in welchem diese darum gebeten werden, von den Zuständen in Serbien Kenntniß zu nehmen. Der Appell war an den Botschafter Sharp gerichtet und ist von diesem dem Staatsdepartement überwiesen worden, welches ihn heute veröffentlicht hat. In demselben heißt es:

„Die wirthschaftliche Ausbeutung, welche die Oesterreicher und Bulgaren durch gesetzwidrige Auferlegung von Steuern, Entwerthung des serbischen Geldes, Verkauf von serbischen Monopolen und die Einführung von neuen Monopolen, durch Verletzungen des Eigenthumsrechtes durch zwangsweise Subskriptionen zu der Kriegsanleihe betreiben, hat nur einen Zweck — den wirthschaftlichen Ruin des besetzten Serbiens.

„Sich auf die Bestimmungen der Haager Convention berufend, erhebt die königlich serbische Regierung energischen Protest gegen diese willkürlichen Maßnahmen der österreichischen und der bulgarischen Behörden, da dieselben flagrante Verletzungen des Völkerrechts bilden."

Bulgaren und Oesterreicher werden beschuldigt, Privathäuser, den königlichen Palast, das ethnographische und das National-Museum geplündert zu haben. Bergwerke sind mit Beschlag belegt und Privateigenthum, dessen Besitzer geflohen sind, ist verkauft worden.

„Der Zweck all' dieser Maßregeln, heißt es in dem Appell, ist der, so viel Geld wie möglich aus dem Lande zu ziehen und gleichzeitig moralische Niedergeschlagenheit bei der Bevölkerung hervorzurufen.

rum gebeten werden, von den Zuſtänden in Serbien Kenntniß zu nehmen. Der Appell war an den Botſchafter Sharp gerichtet und iſt von dieſem dem Staatsdepartement überwieſen worden, welches ihn heute veröffentlicht hat. In demſelben heißt es:

„Die wirthſchaftliche Ausbeutung, welche die Oeſterreicher und Bulgaren durch geſetzwidrige Auferlegung von Steuern, Entwerthung des ſerbiſchen Geldes, Verkauf von ſerbiſchen Monopolen und die Einführung von neuen Monopolen, durch Verletzungen des Eigenthumsrechtes durch zwangsweiſe Subſkriptionen zu der Kriegsanleihe betreiben, hat nur einen Zweck — den wirthſchaftlichen Ruin des beſetzten Serbiens.

„Sich auf die Beſtimmungen der Haager Convention berufend, erhebt die königlich ſerbiſche Regierung energiſchen Proteſt gegen dieſe willkürlichen Maßnahmen der öſterreichiſchen und der bulgariſchen Behörden, da dieſelben flagrante Verletzungen des Völkerrechts bilden."

Bulgaren und Oeſterreicher werden beſchuldigt, Privathäuſer, den königlichen Palaſt, das ethnographiſche und das National-Muſeum geplündert zu haben. Bergwerke ſind mit Beſchlag belegt und Privateigenthum, deſſen Beſitzer geflohen ſind, iſt verkauft worden.

„Der Zweck all' dieſer Maßregeln, heißt es in dem Appell, iſt der, ſo viel Geld wie möglich aus dem Lande zu ziehen und gleichzeitig moraliſche Niedergeſchlagenheit bei der Bevölkerung hervorzurufen, indem ſie gezwungen wird auf feindliche Kriegsanleihen und Rothe Kreuz-Arbeit zu ſubſkripiren. Sie haben über hundert Millionen Kronen erpreßt, um öſterreichiſche und deutſche Gläubiger zu befriedigen.

„Die ſerbiſche Regierung behält ſich das Recht vor, zur Zeit der Friedensunterhandlungen eine Entſchädigung zu beanſpruchen, welche dem Schaden entſpricht, welcher dem Staate und deſſen Unterthanen durch dieſe flagrante Verletzungen des Völkerrechtes zugefügt worden iſt."

(h.21)

Serbia Will Turn to the United States for Help Against Austrian Exploitation.

Reserves Right to Claim Compensation.

Washington, July 24.

The Serbian legation in Paris has made an appeal to the United ates in which this country is begged to take notice of conditions in rbia. The appeal was made to Ambassador Sharp and was transitted by him to the State Department, which published it today. says: "The economic exploitation which Austria and Bulgaria are mmitting by illegal levying of taxes, debasement of Serbian coinge, sale of Serbian monopolies, the introduction of new monopolies, violation of the rights of private property, by forced subscription war loans, has only one aim—the economic ruin of occupied rbia.

Appealing to the Acts of the Hague Convention, the Royal Serbian overnment raises an energetic protest against these wanton measres of Austrian and Bulgarian authorities, inasmuch as they are agrant infractions of international law."

Bulgarians and Austrians are charged with having plundered rivate residences, the Royal Palace, the Ethnographic and the Naonal Museums. Mines have been requisitioned and private propty, the owners of which have fled, has been sold.

The purpose of all these measures, it is said in the appeal, is to take s much money as possible from the country and at the same time to ause moral depression among the population, since they are forced o subscribe to enemy War Loans and Red Cross Work. They have xtorted over a hundred million kronen, in order to satisfy Austrian nd German creditors.

22 "The Serbian government reserves the right to claim at the time of the peace negotiations an indemnity which will ompensate for the damage suffered by the State and its subjects hrough these flagrant violations of international law."

which said report was false, as the defendants then and there well knew, in this, that the report of the original dispatch from which the said report was reproduced by the defendants in the said "Philadelphia Tageblatt" contained a paragraph in the German language, a true and correct copy of which is as follows:

"Oesterreich und Bulgarien werden beschuldigt, Machtbefugnisse auszuüben, welche durch das Völkerrecht gewährten weit übersteigen und welche für die Serben vollständigen Ruin bedeuten. Es wird benauptet, dass Osterreich direkte und übertrieben hohe Steuern auferlegt, welche das Volk nicht zahlen kann, und einen neuen Zolltarif, durch welchen nur die osterreichicshe Industrie gewinnen kann. Bulgarien hat an Stelle das serbischen ein bulgarisches Steuersystem eingeführt, welches konfiscatorisch ist. Serb-

isches Geld ist konfisziert und an dessen Stelle bulgarisches und österreichisches Geld eingeführt worden."

and a true and correct translation of which into English is as follows:

"Austria and Bulgaria are charged with having assumed authority which far transcends that allowed by international law, and which portends complete ruin for Serbia. It is asserted that Austria has laid direct and excessively high taxes which the people cannot pay and a new tariff by which only Austrian industries can profit. In place of the Serbian system, Bulgaria has introduced a Bulgarian system of taxation which is confiscatory. Serbian money is confiscated and in its place Bulgarian and Austrian money have been introduced."

23 which paragraph was omitted by the defendants in reproducing the said report.

(*f*) In that the said defendants did, on August 14, 1917, willfully cause to be printed, published and circulated in and through the columns of the said "Philadelphia Tageblatt," a report purporting to be a dispatch from New York, dated August 13, in the German language, a true and correct copy of which report with the captions over the same, marked (6), is set forth on a separate sheet of paper facing this page, and is hereby incorporated into this count and made a part hereof; a true and correct translation of which report and captions into English is as follows:

An Interim.

The New Chancellor Will Not Be Able to Last Long and May Give Way to Kuhlmann.

Wiegand Says the Reichstag Will Not Let the Prerogatives It Has Won Be Taken From It.

Empire Will Have to Introduce Monopolies After Conclusion of Peace.

New York, Aug. 13.—Carl van Wiegand, the American correspondent who recently returned from Germany, who has thoroughly clear insight into German conditions, has expressed himself significantly concerning the latest Chancellor crisis as follows:

"Dr. Georg Michaelis will not remain long in office and dignity his glory as Chancellor of the German Empire will be of short duration. He will not be able to hold his place. With all his excellent personal qualities, he is still nothing more or less than an official of the Government, even though a very capable and conscientious one. He is considered today only an official. He undertook

24 his high office as a political 'neutral' without giving utterance to any binding convictions, but conservative in his tendencies.

The Social-democrats, the liberals and the independents regard

Ein Interim.

Der neue Kanzler wird sich nicht lange halten können und Kuhlmann Platz abtreten.

Der Reichstag läßt sich die einmal gewonnene Prärogative nicht nehmen, sagt Wiegand.

Reich wird, nach Friedensschluß Monopole einführen müssen.

New York, 13. August. Carl von Wiegand, der kürzlich aus Deutschland zurückgekehrte amerikanische Correspondent, der einen überaus klaren Einblick in die deutschen Verhältnisse besitzt, hat sich heute über die letzte Kanzlerkrisis bezeichnend wie folgt ausgesprochen:

„Dr. Georg Michaelis wird nicht lange in Amt und Würden bleiben. Seine Herrlichkeit als Kanzler des Deutschen Reiches wird von kurzer Dauer sein. Er wird sich nicht halten können. Bei allen vorzüglichen persönlichen Eigenschaften ist er dennoch nicht mehr und nicht weniger als ein Beamter der Regierung, wenn auch ein sehr fähiger und gewissenhafter. Er gilt auch heute nur als „Beamter". Er übernahm sein hohes Amt als politisch „Neutraler" ohne irgend welche bindende Ueberzeugungen zum Ausdruck zu bringen, aber conservativ in seinen Tendenzen.

Die Sozialdemokraten, die Liberalen und Freisinnigen betrachten ihn einfach als einen Interims-Kanzler, als ein Vorläufer der neuen Aera, die für Deutschland anbrechen wird.

„Der Löwe hat Blut geleckt," heißt es im Volke, seit der Reichstag im Bewußtsein seiner Macht den Kaiser gezwungen hat, Bethmann Hollweg den Abschied zu geben. Früher mußte man annehmen, daß dem Reichstag eine solche Macht fehlte, weil es sehr schwierig war, der Opposition eine Majorität zu sichern. Solange zehn bis zwölf politische Faktionen sich im Reichstage gegenseitig befehdeten, war es der Regierung leicht, eine Partei

„Dr. Georg Michaelis wird nicht lange in Amt und Würden bleiben. Seine Herrlichkeit als Kanzler des Deutschen Reiches wird von kurzer Dauer sein. Er wird sich nicht halten können. Bei allen vorzüglichen persönlichen Eigenschaften ist er dennoch nicht mehr und nicht weniger als ein Beamter der Regierung, wenn auch ein sehr fähiger und gewissenhafter. Er gilt auch heute nur als „Beamter". Er übernahm sein hohes Amt als politisch „Neutraler" ohne irgend welche bindende Ueberzeugungen zum Ausdruck zu bringen, aber conservativ in seinen Tendenzen.

Die Sozialdemokraten, die Liberalen und Centrumsleute betrachten ihn einfach

den Versuch, den Reichstag für Bewilligung der Gelder zu gewinnen, indem er die Abschaffung des Dreiklassen-Wahlsystems in Preußen versprach. Das hätte im Februar und März dieses Jahres genügt; im Juli zog dieses nicht mehr. Der Reichstag hatte das Vertrauen in Bethmann Hollweg verloren und dieser mußte gehen.

Der Reichstag verlangte eine Art Parlaments-Regierung und man wußte, daß Bethmann Hollweg einer solchen durchaus abgeneigt war. Dr. Michaelis sollte nun der Mittelsmann werden, und er schlug den goldenen Mittelweg ein, indem er die einzelnen Ministerposten den Parteiführern des Reichstages anbot. Aber nur eine Partei, die des Centrums, acceptirte dies und der 71jährige Centrumsführer Dr. Peter Spahn, früher Gerichts-Präsident in Frankfurt am Main, nahm das ihm angebotene Portefeuille eines preußischen Justizministers an. Alle anderen Parteien lehnten ab.

Entweder Herr Legien oder Dr. David von der sozialdemokratischen Partei war für den neugeschaffenen Posten eines Arbeitsministers ausersehen; doch die Partei erklärte, daß keiner der ihren ein solches Amt annehmen dürfe, es sei denn, die Minister seien künftighin dem Volke durch den Reichstag verantwortlich.

Dr. Richard von Kuhlmann, der neue Staats-Sekretär des Auswärtigen, ist der einzige in dem neuen Cabinet, das nun zur Mehrzahl aus Bureaukraten zusammengestellt wurde, der im Amte bleiben und möglicherweise Dr. Michaelis's Nachfolger werden mag.

(k.25)

him simply as an interim Chancellor, as a forerunner of the new era which will dawn in Germany.

'The lion has tasted blood' it is said among the people since the Reichstag, in consciousness of its power, has forced the Emperor to remove Bethmann-Hollweg. Formerly it was taken for granted that the Reichstag had no such power because it was very difficult for the opposition to secure a majority. So long as ten or twelve political factions were mutually opposed in the Reichstag, it was easy for the government to put one party against another. When, however, a majority has come into being, as then in June, then nothing is left to the government, but to capitulate.

The control of finances is within the Reichstag's powers. When the Emperor, who personally was very favorable to Bethmann-Hollweg, could not determine to dismiss him, the Reichstag let the new budget, which demanded fifteen billion marks, lie on the table after its first reading. The Emperor made the attempt to win over the Reichstag to vote the money, by promising the elimination of the three class voting system in Prussia. That would have been sufficient in February or March of this year; in July, however, this did not work. The Reichstag had lost its confidence in Bethmann-Hollweg, and he had to go.

The Reichstag demanded a sort of parliamentary government, and it was known that Bethmann-Hollweg was entirely disinclined to such a government. Dr. Michaelis was to work it out, and he took the golden mean, by offering ministerial posts to the leaders of each of the parties in the Reichstag. But only one party, that of the Centre, accepted this, and the seventy-one year old leader of the Centre, Dr. Peter Spahn, former President of the Court at Frankfurt-am-Main, accepted the portfolio offered him of a Prussian Minister of Justice; all the other parties refused.

Either Mr. Legien or Dr. David of the Social-democrat Party was chosen for the newly created post of Minister of Labor, yet the party declared that none of their members might take such an office, unless it be that the Ministers were in the future responsible to the people through the Reichstag. Dr. Richard von Kuhlman, the New Secretary of State for Foreign Affairs is the only one in the new Cabinet, which has been made up for the most part of Bureaucrats, who remains in office and may possibly become Dr. Michaelis' successor.

(Here follows reproduction of slip marked p. 25.)

Which said report was false, as the defendants then and there well knew, in this, that the report of the original despatch from which the said report was reproduced by the defendants in the said "Philadelphia Tageblatt," contained certain sentences, a true and correct copy of which is as follows:

1. "falls Michaelis das Programm der Radikalen nicht acceptiert Er kann sich glücklich schätzen, wenn er so viele Monate am Ruder bleibt als Bethmann-Hollweg Jahre zu verzeichnen hat, nämlich acht. Das ist die Ueberzeugung aller Parliamentatrier in Deuschtland."

2. "Er hoffte, die Faktionen zufrieden zustellen, da die Minister so wenigstens ihrer Partei gegenüber verantwortlich würden."

3. "Die Stellungnahme der Reichstags-Parteien verursachte so das lange Zaudern der Regierung in der veröffentlichung der Namen der neuen Minister."

4. "Des neuen Kanzlers grösster Fehler war, wie es heisst, dass er Dr. Helfferich in Amte belies. Dr. Helfferich und Dr. Zimmermann waren einst die populärsten Minister, aber nun ist alle Popularität dahin und die neue Zeit fordert neue Männer."

26 and a true and correct translation of which into English is as follows:

1. "in case Michaelis does not accept the program of the radicals He may consider himself lucky if he remains at the helm as many months as Bethmann-Hollweg did years, namely eight. That is the conviction of all parliamentarians in Germany."

2. "He hoped to satisfy the factions, since in this way the ministers would become responsible at least to their own parties."

3. "Thus the stand of the Reichstag parties caused the government's long delay in announcing the names of the new ministers."

4. "The new Chancellor's greatest mistake was, it is said, that he retained Dr. Helfferich in office. Dr. Helfferich and Dr. Zimmermann were once the most popular ministers, but now their popularity is gone and the new times demand new men."

which sentences were omitted by the defendants in reproducing the said report.

(*g*) In that the said defendants did, on August 16, 1917, wilfully cause to be printed, published and circulated in and through the columns of the said "Philadelphia Tageblatt," a report purporting to be a dispatch from Washington, dated August 15, in the German language, a true and correct copy of which report with the caption over the same, marked (7), is set forth on a separate sheet of paper facing this page, and is hereby incorporated into this count and made a part hereof; a true and correct translation of which report and caption into English is as follows:

Nothing Certain.

Washington, Aug. 15th.—Pope Benedict's peace proposals have aroused the greatest interest in local official circles. Everywhere in

Washington it is admitted that they spring from the urgent
27 wish to give the world peace again. Official circles declare, meanwhile, that the return to the status quo, urgently recommended by the Pope, has already been refused by the United States and the entente Powers. In accordance with President Wilson's order, a comprehensive statement of the peace proposals is avoided by government officials in private conversation. They admit that a painful situation has been brought about by the proposals, because the refusal of the same will entail a heavy responsibility.

In official circles it is declared that the peace proposals of the Pope will surely have as a consequence, in all lands, especially the United States, a crystal-ization of the desire for peace. They are afraid of losing their influence upon Russia where there is a general desire for peace without annexations of territory and without war indemnity. It is considered certain that an exchange of views regarding the peace offers of the Pope has already been begun between the governments of the entente and of the United States. Unofficial reports which have reached local diplomatic circles make it evident that the British as well as the French Cabinets have gone into consultation, regarding what course is to be followed. Reports will immediately be made to the President of the United States as soon as an agreement has been reached in Paris and London regarding the position to be taken.

The most important question with respect to the peace proposals of the Pope consists in this, namely: How far they will lead to a free expression of war aims. In official circles people are convinced that Germany will accept all the peace proposals of the Vatican with the exception of the one which has to do with the Alsace-Lorraine question. Under no circumstances can Germany be counted on for the surrender of the "lost provinces" of France unless she has been completely humbled.

From a reliable diplomatic source, it was reported today that Ger-
many and Austria would accept the peace proposals of the
28 Pope and the burden of a refusal, in case one resulted, would be thrown upon the United States, and the entente powers. This news, which arrived in Washington today, has made it the duty of the administration more than ever to treat the note of the Pope in the most careful manner. Secretary of State Lansing was asked whether the United States had made the war aims of the entente their own. He refused to give a definite answer to it, and called attention to the fact that the war aims are subject to continuous change. In diplomatic circles of the entente, the opinion was expressed that the sole immediate results of the peace proposals of the Vatican would consist in an exhaustive declaration on the part of the enemies of Germany with respect to their war objectives. That would be of great advantage, for Germany would know what it has to expect and would make, eventually, counter-proposals which possibly would open the way to peace.

Even if they did not conceal their mistrust with reference to the latest peace move, because Germany is apparently put in a favorable

position by it, nevertheless the diplomats of the entente admitted today that it cannot be rejected without an exact, specific answer. According to their opinions no doubt remains that the Catholics in all lands will give the greatest importance to the proposals of his Holiness, because they as a whole recognize that they spring from the honorable wish to put an end to the war and thereby to stop the fearful bloodshed that has outraged the whole civilized world.

Members of the Cabinet declared that the administration will take its time in answering the note of the Pope. In the Cabinet meeting the peace proposals could not be shown, because the official text of the Papal note had not yet come. They were united in this, however, that in consequence of the note the President would soon be impelled to specify exactly the war aims of the United States.
29 If then the enemies of Germany would make an honorable answer to the Pope the president might, in another way, find an opportunity to define the position of the United States in order that the world might no longer be in doubt about it.

(Here follows reproduction of slip marked p. 29.)

Nichts Sicheres.

Washington, 15. Aug. Papst Benedikt's Friedensvorschläge haben in hiesigen amtlichen Kreisen großes Interesse erregt. Ueberall in Washington wird zugegeben, daß sie dem dringenden Wunsche entsprangen, der Welt den Frieden wiederzugeben. Amtliche Kreise erklären indessen, daß die vom Papste dringend empfohlene Rückkehr zum „Status quo" bereits von den Ver. Staaten und den Entente-Mächten abgewiesen worden ist. Der Ordre des Präsidenten Wilson gemäß wurde eine eingehende Erörterung des Friedens-Vorschlages von Regierungsbeamten vermieden. Im privaten Gespräch geben sie indessen zu, daß durch die Offerte eine peinliche Lage geschaffen worden ist, weil mit der Abweisung derselben eine schwere Verantwortlichkeit verbunden ist.

An amtlichen Kreisen wird erklärt, daß die Friedens-Vorschläge des Papstes in allen Ländern, einschließlich der Vereinigten Staaten, sicherlich eine Krystallisirung des Verlangens nach Frieden zur Folge haben werden. Sie fürchten ihren Einfluß auf Rußland, wo das Verlangen nach Frieden ohne Gebietszuwachs und

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Noch ungewiß.

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ohne Kriegsentschädigung ein allgemeines ist, zu verlieren. Es gilt als sicher, daß ein Meinungsaustausch in Bezug auf die Friedens-Offerte des Papstes zwischen den Regierungen der Entente und der Ver. Staaten bereits eingeleitet ist. Nichtamtliche Nachrichten, welche heute hiesigen diplomatischen Kreisen zugegangen sind, lassen ersehen, daß das britische sowohl wie das französische Cabinet in Berathungen darüber eingetreten sind, welcher Curs verfolgt werden soll. Dem Präsidenten der Ver. Staaten wird sofort Mittheilung gemacht werden, sobald man sich in Paris und London über die zu beobachtende Haltung geeinigt hat.

Die wichtigste Frage in Bezug auf die Friedensvorschläge des Papstes besteht darin, bis zu welchem Grade sie zu einer freien Erörterung der Kriegsziele führen werden. In amtlichen Kreisen ist man überzeugt davon, daß Deutschland alle der Entente zu den ihrigen gemacht hätten. Er weigerte sich, darauf eine bestimmte Antwort zu geben, indem er darauf hinwies, daß die Kriegsziele beständigen Aenderungen unterworfen seien.

In diplomatischen Kreisen der Entente wurde der Ansicht Ausdruck gegeben, daß das einzige sofortige Resultat der Friedens-Offerte des Vatikans in einer erschöpfenden Erklärung der Feinde Deutschlan's bezüglich ihrer Kriegsziele bestehen würde. Das dürfte von großem Vortheil sein, denn Deutschland würde alsdann wissen, was es zu erwarten hat, und eventuell Gegenvorschläge machen, die möglicher Weise den Weg zum Frieden eröffnen würden.

Wenn sie auch kein Hehl aus ihrem Argwohn in Bezug auf die neueste Friedensbewegung machten, weil dadurch anscheinend Deutschland in eine günstige Lage versetzt wird, so gaben Diplomaten der Entente jedoch heute zu, daß sie nicht ohne eine genaue specifizirte Antwort von der Hand gewiesen werden könnte. Es unterliegt ihrer Ansicht nach keinem Zweifel, daß die Katholiken in allen Ländern dem Vorschlage Seiner Heiligkeit das größte Gewicht beilegen werden, weil sie sämmtlich anerkennen, daß sie dem ehrlichen Wunsche entspringen, dem Kriege ein Ende zu machen und damit dem furchtbaren Blutvergießen Halt zu gebieten, das die ganze civilisirte Welt entsetzt hat.

Mitglieder des Cabinets erklären, daß die Administration sich mit der Beantwortung der päpstlichen Note Zeit lassen werde. In der Cabinets-Sitzung konnte die Friedens-Offerte nicht erörtert werden, weil der amtliche Text der päpstlichen Note noch nicht eingetroffen war. Man war sich darüber einig, daß infolge der Note sich der Präsident in nächster Zeit schon veranlaßt sehen würde, die Kriegsziele der Ver. Staaten genau zu spezifiziren. Sollten die Feinde Deutschlands eine gemeinsame Antwort dem Papste zugehen lassen, so dürfte der Präsident in anderer Weise Gelegenheit finden, die Stellungnahme der Ver. Staaten zu definiren, damit die Welt darüber nicht länger im Zweifel sein kann.

n Staaten, sicherlich eine Kristallisirung es Verlangens nach Frieden zur Folge aben werden: Sie fürchten ihren Einuß auf Rußland, wo das Verlangen ach Frieden ohne Gebietszuwachs und

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Die wichtigste Frage in Bezug auf die riedensvorschläge des Papstes besteht dan, bis zu welchem Grade sie zu einer eien Erörterung der Kriegsziele führen erden. In amtlichen Kreisen ist man berzeugt davon, daß Deutschland alle riedensvorschläge des Vatikans acceptin wird, mit Ausnahme desjenigen, welr sich mit der elsäßisch-lothringischen rage beschäftigt. Unter keinen Umständen wird sich Deutschland zur Herausgabe er „verlorenen Provinzen" Frankreich's ereit finden lassen, außer es müßte vollständig niedergerungen sein.

Aus zuverlässiger diplomatischer Quelle erlautete heute, daß Deutschland und Oesterreich-Ungarn die Friedens-Vorschläge des Papstes annehmen und die Würde der Abweisung, falls eine solche erfolgt, den Ver. Staaten und den Entente-Mächten zuweisen würden. Diese Nachricht, welche heute in Washington eintraf, hat es der Regierung erst recht zur Pflicht gemacht, in überaus vorsichtiger Weise die Note des Papstes zu behandeln.

Staats-Sekretär Lansing wurde gefragt ob die Ver. Staaten die Kriegsziele der Hand gewiesen werden könnte. Es unterliegt ihrer Ansicht nach keinem Zweifel, daß die Katholiken in allen Ländern dem Vorschlage Seiner Heiligkeit das größte Gewicht beilegen werden, weil sie sämmtlich anerkennen, daß sie dem ehrlichen Wunsche entspringen, dem Kriege ein Ende zu machen und damit dem furchtbaren Blutvergießen Halt zu gebieten, das die ganze civilisirte Welt entsetzt hat.

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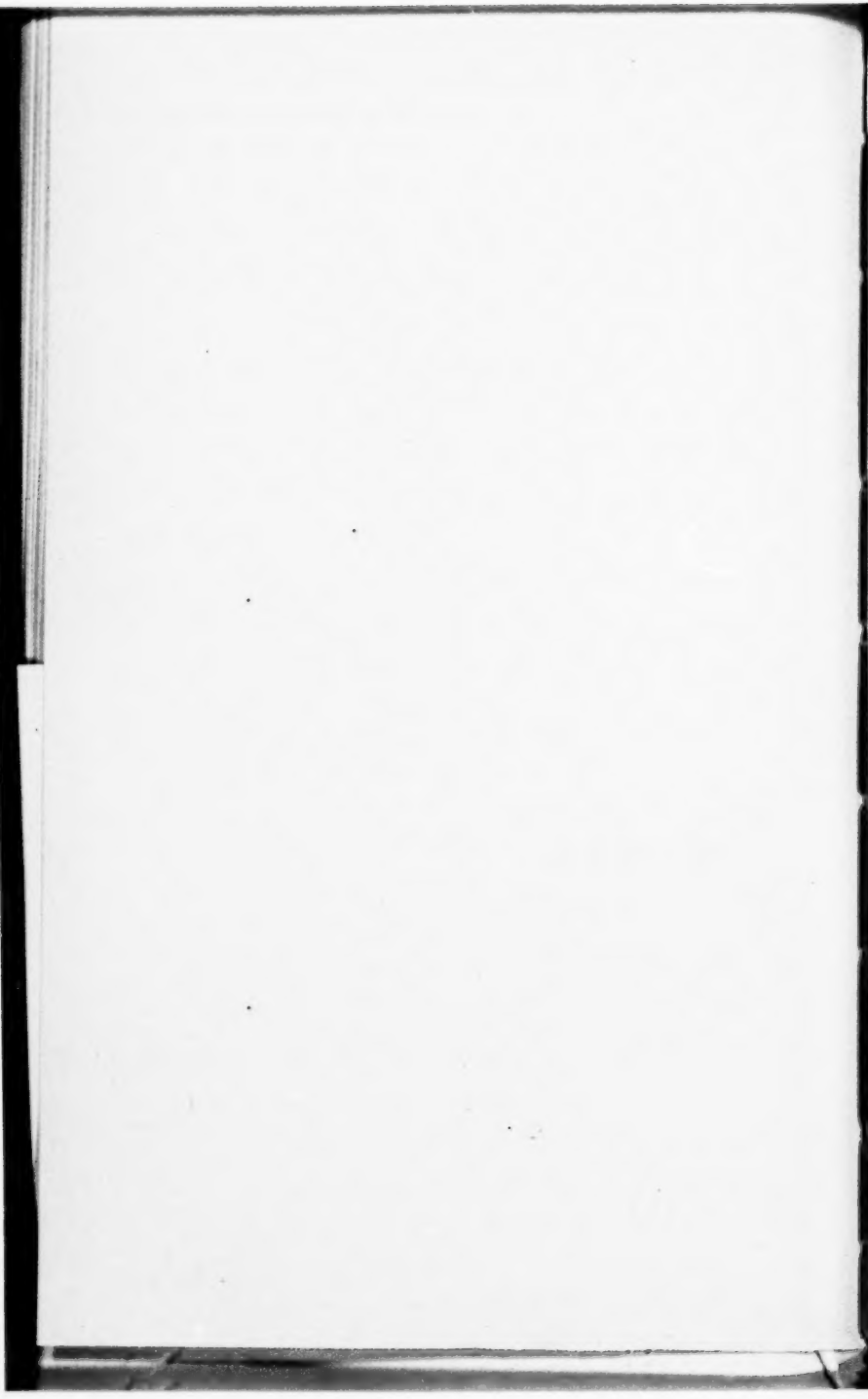
(h. 29)



Which said report was false, as the defendants then and there knew, in numerous respects, and particularly in this, that the rt of the original despatch from which the said report was re-uced by the defendants, in the said "Philadelphia Tageblatt," ained a paragraph a true and correct copy of which in the man language is as follows:

Man ist heir überzeugt davon, dass Deutschland die Einberufung r Friedens-Konferenz mit grosser Freude begrüssen würde, da inen Diplomaten gelingen dürfte, eine Entente-Mächte gegen die ere auszuspielen um auf diese Weise die günstigsten Bedingungen rhalten, wenn ein Friedens Vertrag entworfen wird."

a true and correct translation of which into English is as fol-:

The conviction is general here that Germany would hail the call-of a peace conference with great joy, since its diplomatists might eed in playing the entente powers one against the other in order his way to gain the most favorable conditions when a treaty of e is drafted."

ch paragraphs were omitted by the defendants in reproducing said report.

h) In that the said defendants did, on August 22, 1917, wilfully e to be printed, published and circulated in and through the mns of the said "Philadelphia Tageblatt," a report purporting e a dispatch from Washington, dated August 21, in the German guage, a true and correct copy of which report with the captions over the same, marked (8), is set forth on a separate sheet of paper facing this page, and is hereby incorporated into this count and made a part hereof; a true and correct translation hich report and caption into English is as follows:

War of the Rich.

ator La Follette Thinks They Ought Not to Make a Cent of Profit.

Fight in the Senate Over Increased Taxation of War Profits.

Washington, August 21.—Taxation of riches in such a measure t the burdens of the cost of the war will be taken from the ulders of the poor man was recommended today in the Senate by ator La Follette in a long speech. He declared that the proposed billion dollar bill as drawn up in the Senate's Committee on ancial Affairs is impractical because it covers less than seventeen cent. of the war expenses of the first year and from this would ult the necessity of issuing bonds for billions of dollars. Bonds wever, mean the same as an increased cost of living, and one of consequences would be that next winter bread riots could be ex-ted in the big cities. He recommended the acceptance of amend-nts by which further taxation of large incomes and big war profits

would be effected, which would bring the total amount of the bill to about $3,500,000,000.

Senator La Follette declared that wealth had never, in any war, offered itself on the altar of patriotism. He attacked the proposed issue of bonds and prophesied that the Liberty Bonds would eventually find their way into the hands of the rich, if they had not
31 already done so. "But," he *con-* continued, "this is not all, for war, and principally the sale of bonds, leads inevitably to inflation. This raises prices and through that the cost of living for the great mass of people is raised. Reason and experience teach us that the policy of financing a war for the most part by borrowing the necessary money, is in itself one of the worst financial burdens that war imposes upon men. But wealth is always a powerful factor in the Government. It fattens on war loans and war contracts as well as on speculation, which is not wanting in time of war. Upon these grounds the rich are always in favor of war, and when they have succeeded in bringing on a war, they are often powerful enough with ministers of war and parliaments and congresses to force the maximum of loans and to reduce taxation to a minimum by every possible intrigue and argument.

And that is the case with us in this war. Within thirty days after the declaration of war wealth had precipitated us into bond issues of unheard of size. Morgan came to the city, the press urged it, the administration commanded it, and Congress authorized the issue of five billions of untaxable Government bonds and two billions of interest bearing Treasury notes."

Senator La Follette attacked the program of the administration under which a new tax measure will be introduced next winter. "Of what use is the postponement?" he asked, "Whose interest is served if taxes on incomes and war profits are kept down and the masses are delivered over to the money lenders as security for an enormous and wickedly disproportionate issue of bonds?" He insisted that the policy of financing the war should at once be decided upon.

"Today the way is clear," he explained, "hesitation to provide now for heavy taxes would not be a mistake, it would be something worse."

32 Senator La Follette reviewed the financial history of previous American Wars. "We must not repeat such mistakes," he said, "it would be blind madness if we did not learn from the mistakes that were made in previous wars. A mistake that we make now may be fatal. It would certainly cost us untold millions of dollars and thousands upon thousands of lives, as by it we would prolong the war unnecessarily.

As long as one man can be found who makes war profits, I am in favor of taking away in taxes such part of those profits as the Government requires, and the Government needs the whole of such profits before adding a penny to the taxation of people who are already staggering under heavy burdens by reason of the higher prices occasioned by the war. This may be a new principle in war financing, but it is the least that one can do for the mass of the

Krieg der Reichen.

Sie ſollen auch keinen Cent Profit machen, ſagt Senator La Follette.

Heißer Kampf im Senat wegen ſtärkerer Heranziehung der Kriegsgewinne zur Steuer.

Waſhington, 21. Aug. Heranziehung des Reichthums in ſolchem Maßſtabe, daß die Laſten der Kriegskoſten von den Schultern des armen Mannes genommen werden, wurde heute im Senat von Senator La Follette in längerer Rede befürwortet. Er erklärte, daß die Zweibillionen Dollar-Vorlage, wie ſie vom Finanzkomite des Senats entworfen worden iſt, unpraktiſch ſei, da ſie weniger als ſi-bzehn Prozent der Kriegskoſten des erſten Jahres aufbringen und die Nothwendigkeit zur Folge haben würde, Bonds im Werthe von Milliarden Dollars auszugeben. Bonds aber ſeien mit höheren Koſten des Lebensunterhalts gleichbedeutend und eine der Folgen würde ſein, daß man im nächſten Winter in den Großſtädten Brotriots erwarten könne. Er empfahl die Annahme von Zuſätzen, durch welche weitere Abgaben von hohen Einkommen und großen Kriegsprofiten erzielt würden, wodurch der Geſammtertrag der Bill auf etwa $3,500,000,000 gebracht würde.

Senator La Follette erklärte, daß der Reichthum ſich niemals in irgend einem Kriege auf dem Altare des Patriotismus geopfert habe. Er griff die geplante Bondsausgabe an und prophezeite, daß die Liberty Bonds ſchließlich ihren Weg in die Hände der Reichen finden würden, wenn ſie dies nicht bereits gethan hätten.

„Aber", fuhr er fort, „dies iſt nicht alles, denn Krieg, hauptſächlich der Verkauf von Bonds, zwingt unvermeidlich zur Inflation. Dieſe erhöht die Preiſe, dadurch die Koſten des Lebensunterhaltes für die Koſten des Lebensunterhaltes für die große Maſſe des Volkes erhöhend. Vernunft und Erfahrung lehren uns, daß die Politik der Finanzierung eines Krieges durch Borgen des größeren Theiles des nöthigen Geldes an und für ſich eine der ſchwerſten finanziellen Bürden iſt, welche der Krieg den Menſchen auferlegt. Mehr aber als all dies, ſie bezahlen die Kriegskoſten mit ihrem Blut und ihrem Leben und dem größten Opfer von allen — mit dem Blut und dem Leben ihrer Lieben.

„Wenn Brodreihen ein gewohnter Anblick in allen Städten des Landes ſind, wie es unvermeidlich ſein wird, wenn der gegenwärtige Preis der nothwendigſten Lebensbedürfniſſe während des kommenden Winters beibehalten wird, wenn Kälte und Hunger tägliche Gäſte bei tauſenden Familien ſein werden, welche bisher nur Behagen gekannt haben, ein Zuſtand, welcher ſicher während der kommenden Wintermonate beſtehen wird, falls keine Abhilfe gegen die gegenwärtigen Preiſe gefunden werden kann, dann wird es meiner Anſicht nach den Mitgliedern dieſes Kongreſſes wenig zur Genugthuung reichen, daß ſie zu der Erkenntniß kommen, daß ſie zu den Entbehrungen und den Leiden der Maſſen des Volkes beigetragen haben, indem ſie ſich geweigert haben, einen auch nur annähernd mäßigen Antheil der finanziellen Laſt den Reichen zuzuweiſen."

Kosten des Lebensunterhalts gleichbedeutend und eine der Folgen würde sein, daß man im nächsten Winter in den Großstädten Brotriots erwarten könne. Er empfahl die Annahme von Zusätzen, durch welche weitere Abgaben von hohen Einkommen und großen Kriegsprofiten erzielt würden, wodurch der Gesammtertrag der Bill auf etwa $3,500,000,000 gebracht würde.

Senator La Follette erklärte, daß der Reichthum sich niemals in irgend einem Kriege auf dem Altare des Patriotismus geopfert habe. Er griff die geplante Bondausgabe an und prophezeite, daß die Liberty Bonds schließlich ihren Weg in die Hände der Reichen finden würden, wenn sie dies nicht bereits gethan hätten.

„Aber", fuhr er fort, „dies ist nicht alles, denn Krieg, hauptsächlich der Verkauf von Bonds, zwingt unvermeidlich zur Inflation. Diese erhöht die Preise, dadurch die Kosten des Lebensunterhaltes für die Kosten des Lebensunterhaltes für die große Masse des Volkes erhöhend. Vernunft und Erfahrung lehren uns, daß die Politik der Finanzierung eines Krieges durch Borgen des größeren Theiles des nöthigen Geldes an und für sich eine der schwersten finanziellen Bürden ist, welche der Krieg den Menschen auferlegt. Aber der Reichthum ist stets ein mächtiger Faktor in der Regierung. Er mästet sich an Kriegsanleihen und Kriegskontrakten, sowie an der Spekulation, an welcher es in Kriegszeiten nicht fehlt. Aus diesen Gründen ist der Reichthum stets für den Krieg. Und wenn es ihm gelungen ist, den Krieg herbeizuführen, dann ist er oft bei Kriegsministern und Parlamenten und Congressen mächtig genug, Anleihen an ihr Maximum zu forciren und durch alle möglichen Ränke und Argumente die Besteuerung auf ein Minimum zu treiben.

„Und so ist es bei uns in diesem Kriege der Fall. Innerhalb dreißig Tagen seit der Kriegserklärung hatte uns der Reichthum in Bondausgaben von unerhörter Höhe gestürzt. Morgan kam in die Stadt, die Presse drängte, die Administration empfahl und der Congreß ermächtigte die Ausgabe von fünf Milliarden nicht besteuerbarer Regierungsbonds und zwei Milliarden zinstragender Schatzamtsnoten.

Senator La Follette griff das Programm der Administration an, nach welchem im nächsten Winter eine neue Steuervorlage eingebracht werden soll. „Wozu soll der Aufschub dienen?" frug er. „Wessen Interesse soll damit gedient werden, daß die Steuerraten auf Einkommen und Kriegsprofite niedrig gehalten

„Wozu ſoll der Aufſchub dienen?“ frug er. „Weſſen Intereſſe ſoll damit gedient werden, daß die Steuerraten auf Einkommen und Kriegsprofite niedrig gehalten und die Maſſen an die Geldverleiher für eine enorme und tückiſche unverhältnißmäßige Bondausgabe als Hypothek hinterlegt werden?“ Er beſtand darauf, daß über die Politik der Finanzierung des Krieges ſofort entſchieden werden ſolle.

„Heute iſt der Weg klar“, erklärte er. Verzögerung, jetzt für entſprechende Beſteuerung zu ſorgen, würde nicht ein Irrthum ſein. Es würde etwas Schlimmeres ſein.“

Senator La Follette gab einen Ueberblick über die Finanzgeſchichte früherer amerikaniſcher Kriege. „Wir dürfen ſolche Irrthümer nicht wiederholen,“ ſagte er. „Es würde blinde Thorheit ſein, wenn wir nicht aus den Fehlern, welche wir in früheren Kriegen gemacht haben, Lehren ziehen wollten. Ein Fehler, welchen wir jetzt begehen, mag verhängnißvoll ſein. Es wird uns ſicherlich ungezählte Millionen Dollars und tauſende und abertauſende Menſchenleben koſten, indem wir den Krieg unnöthigerweiſe verlängern.

„So lange ein Mann gefunden werden kann, welcher Kriegsprofite macht, bin ich dafür, daß der Theil ſolcher Profite, wie die Regierung ihn braucht, durch Beſteuerung weggenommen wird, und die Regierung bedarf des ganzen Profites, ehe ein Penny durch Beſteuerung der Laſt des Mannes aufgebürdet wird, welcher bereits unter der Laſt hoher Preiſe, welche durch den Krieg veranlaßt ſind, ſchwankt. Dies mag ein in Kriegsfinanzen neues Prinzip ſein, aber es iſt das allerwenigſte, was man den Maſſen des Volkes anzunehmen zumuthet, und es iſt noch bedeutend weniger, als die einfache Gerechtigkeit für ſie verlangen würde.

„Die große Maſſe des Volkes trägt die Kriegskoſten, obſchon ſie direkt nicht mit einem Dollar dafür beſteuert iſt. Aber die große Maſſe des Volkes zahlt mit erhöhten Preiſen und übertrieben langen Arbeitsſtunden. Sie zahlt ſie im Dienſte nicht allein auf dem Schlachtfelde, ſondern wo immer Männer und Frauen mit der ſchweren Alltagsarbeit beſchäftigt

(h. 33.)

people, and it is considerably less than simple justice would demand for them.

The great mass of the people bear the costs of war, although they may not be directly taxed one dollar. The great mass of the people pay in higher prices and prolonged hours of labor. They pay in service, not alone on the battle field, but wherever men and women work hard all day long. But more than all this, they pay the cost of war with their blood, and their lives, and what is the greatest sacrifice of all, with the blood and lives of their loved ones.

If bread lines are a familiar sight in every city in the land, as they undoubtedly will be if the present prices of the most necessary supplies for living hold firm during the coming winter, if cold and hunger become daily guests with thousands of families, who, until now, have only known comfort, a condition which is certain to come about during the coming winter months, if no help against the present level of prices can be found, then it is my opinion
33 that the members of this Congress will do little enough if they come to realize that they are adding to the privations and pains of the mass of the people if they hesitate to place even a fairly moderate portion of the financial burden upon the rich."

(Here follows reproduction of slip marked p. 33.)

Which said report was false, as the defendants then and there well knew, in this, that while the report of the original dispatch from which the said report was reproduced by the defendants, in the said "Philadelphia Tageblatt," contained a sentence in the German language, a true and correct copy of which is as follows:

"Bonds aber seien mit höheren Kosten des Lebensunterhalts gleichbedeutend und eine der Folgen würde sein, dass man in nächsten Winter in den Grosstädten Brotreihen erwarten könne."

and a true and correct translation of which into English is as follows:

"Bonds, however, mean the same as increased cost of living, and one of the consequences would be that next winter breadlines could be expected in the big cities."

the defendants in reproducing the sentence changed the word "Brotreihen" (bread lines) into the word "Brotriots" (bread riots) so as to make the sentence in German read:

"Bonds aber seien mit höheren Kosten des Lebensunterhalts gleichbedeutend und eine der Folgen würde sein dass man im nächsten Winter in den Grosstädten Brotriots erwarten könne."

and so as to make the dispatch read that Senator La Folette had said in his speech that one of the consequences of the proposed issue of bonds would be bread riots in the cities of the United States, when in truth and in fact he said in his speech that one of the consequences would be bread lines in said cities.

34 (*i*) In that the said defendants did, on September 3, 1917, wilfully cause to be printed, published and circulated in and through the columns of the said "Philadelphia Tageblatt," a report purporting to be a dispatch from Amsterdam dated September 2, in the German laguage, a true and correct copy of which report with the caption over the same, marked (9), is set forth on a separate sheet of paper facing this page, and is hereby incorporated into this count and made a part hereof; a true and correct translation of which report and caption into English is follows:

Further Economies.

Amsterdam, September 2.—It has been reported here that permission to export the wheat and flour on the ships held in New York has been refused. Information to this effect is contained in an official proclamation of the latest cut in bread rations and of the need for economy which has reached the civil authorities. This document says: "We know now with certainty that we cannot count upon the import of breadstuffs from America and that we must strive to make our own provisions suffice."—In initiated circles it is said that under no conditions can the new American proposal be accepted and that the foodstuffs may rot before the ships will be unloaded.

(Here follows reproduction of slip marked p. 34.)

Weitere Einſchränkungen.

Amſterdam, 2. Sept. Es wird hier gemeldet, daß der Export von Weizen und Mehl auf den in New York zurückgehaltenen Schiffen verweigert wurde. Eine diesbezügliche Mittheilung iſt in einer amtlichen Erklärung der jüngſten Brotrationen-Verringerung und der Aufforderung zur Einſchränkung enthalten, welche den Gemeindebehörden zuging. In derſelben heißt es: „Wir wiſſen nun beſtimmt, daß wir auf die Einfuhr von Brotgetreide aus Amerika nicht rechnen können, und daß wir uns bemühen müſſen, mit den eigenen Vorräthen auszukommen." — In eingeweihten Kreiſen heißt es, daß man auf den neuen Vorſchlag Amerikas unter keinen Umſtänden eingehen und das Getreide eher verfaulen laſſen wird, als die Schiffe auszuladen.

(h. 3f)

Which said report was false, as the defendants then and there knew, in this, that the concluding sentence of the said report, ue and correct copy of which in the German language is as fol-:

In eingeweihten Kreisen heist es, dass man auf den neuen schlag Amerikas unter keinen Umständen eingehen und das reide eher verfaulen lassen wird, als die Schiffe auszuladen,"

a true and correct translation of which into English is as fol-:

"In initiated circles it is said that under no conditions can the new American proposal be accepted and that the foodfs may rot before the ships will be unloaded,"

not a part of the dispatch which the said report purported to be, was added by the defendants in reproducing the said report.

j) In that the said defendants did, on September 4, 1917, wilfully se to be printed, published and circulated in and through the umns of the said "Philadelphia Tageblatt," a caption above an cle purporting to be these dispatches from Berlin, September 2; n Paris, September 3, and from Rome, September 3, in the Ger- language, a true and correct copy of which caption and article, rked (10), is set forth on a separate sheet of paper facing this e and is hereby incorporated into this count and made a part eof; a true and correct translation of which into English is as ows:

Sarrail's Troops Beaten.

Berlin, Sept. 2, via London.—The German highest Army Comnd reports from the Macedonian front:

'Near Monastir the French attacked in force. Along the road to lep the enemy troops which pressed into our lines were either anilated or taken prisoners. The attack undertaken parallel to the d was repulsed by the Bulgarians.

Renewed attacks of the Serbians on the Dobropolje have collapsed."

Battle of the Dobropolje.

Paris, Sept. 3.—The French highest Army Command reports der yesterday's date regarding the attacks on the Macedonian nt:

Between the Vardar and Lake Doiran, British Troops carried out several attacks in the course of which about ten prisoners fell into their hands. East of Dobropolje the battle es with varying success, to and fro. In the region of the position en from the Serbians on August 30th, northeast of Monastir, l on the edge of Cerna there was extraordinary artillery activity.

Italians Take Part.

Rome, Sept. 3.—The Italian highest Army Command reports Macedonian front:—

On Friday after a short artillery preparation, our troops in unison with other forces of the Allies, captured the peak of Hill 1050, a the edge of Cerna, and took about twenty German prisoners.

(Here follows reproduction of slip marked p. 36.)

Sarrails Truppen geſchlagen.

Berlin, 2. Sept., über London. Die deutſche Oberſte Heeresleitung meldet vom mazedoniſchen Kriegsſchauplatz:

„Nahe Monaſtir haben die Franzoſen mit ſtarken Kräften angegriffen. Längs der nach Prilep führenden Straße wurden die feindlichen Truppen, welche in unſere Linien eingedrungen waren, entweder vernichtet oder zu Gefangenen gemacht. Der parallel zur Straße unternommene Angriff wurde von den Bulgaren überall abgewieſen.

„Erneute Angriffe der Serben am Dobropolje ſind zuſammengebrochen."

Kämpfe am Dobropolje.

Paris, 3. Sept. Die franzöſiſche oberſte Heeresleitung meldet über die Vorgänge auf dem mazedoniſchen Kriegsſchauplatz unter geſtrigem Datum:

„Zwiſchen dem Vardar und dem Doiran-See haben die britiſchen Truppen mehrere Angriffe ausgeführt, in deren Verlauf ihnen etwa zehn Gefangene in die Hände gefallen ſind.

„Oeſtlich vom Dobropolje wogt der Kampf mit wechſelndem Erfolg auf und ab. Im Raum der am 30. Auguſt von den Serben genommenen Stellungen nordöſtlich von Monaſtir und am Cerna-Bogen gab es äußerſt heftige artilleriſtiſche Thätigkeit."

Italiener betheiligt.

Rom, 3. Sept. Die italieniſche oberſte Heeresleitung meldet:

„Mazedoniſche Front: Am Freitag haben unſere Truppen nach kurzer Artillerievorbereitung in Verbindung mit anderen Streitkräften der Alliirten den Gipfel der im Cerna-Bogen gelegenen Höhe 1050 überfallen und gegen zwanzig Deutſche gefangen genommen."

(fr. 36)

hich said caption was false, as the defendants then and there knew, in this, that the caption above the report of the original tches, from which report the said article was reproduced by the dants, in the said "Philadelphia Tageblatt," read as follows:—

"Sarrails Truppen in Grossen Angriff."

e and correct translation of which into English is as follows:—

"Sarrail's Troops in Great Attack."

) In that the said defendants did, on September 7, 1917, wil- cause to be printed, published and circulated in and through olumns of the said "Philadelphia Tageblatt," a report purport- o be a dispatch from Amsterdam, dated September 6, in the Ger- language, a true and correct copy of which report with the cap- over the same, marked (11), is set forth on a separate sheet of r facing this page, and is hereby incorporated into this count and e a part hereof; a true and correct translation of which report caption into English is as follows:—

For Political Reforms.

nsterdam, Sept. 6.—In Germany the demand for reforms which lead to peace becomes ever stronger. In spite of the efforts of inspired newspapers to counteract the agitation for a greater ure of democracy, the liberal element is daily gaining ground. consequence it can be considered a certainty that with the re- nbling of the Reichstag, the question of reforms and their re- n to the peace proposals will be in the foreground.

rom many sides the demand is made that the German people, heir own interest, repudiate the war aims of the Pan-Germans, insist that the Reichstag lay down the principles of their foreign y. The only objection to this that the conservatives and the party have so far been able to raise is that President Wilson has dled in German internal affairs; the German nation must there- show a solid front against the reform movement. But this argu- t has little weight against the conviction that without reform the of the war is not in sight.

athias Erzberger is daily becoming more and more the man of nour. He wields a markedly greater influence than the Imperial ncellor Michaelis. People who are acquainted with the inner ical situation of Germany, prophesy that Erzberger will in a weeks have brought about the downfall of the successor of the ious Imperial Chancellor.

rzberger who, as leader of the Centre, undoubtedly is familiar the plans of the Vatican, knows that the Pope flatters himself he can bring the war to an end before Christmas if that is within bounds of possibility. But he also knows that there can be no

talk of peace in Germany so long as the military party ha
ing voice.

Erzberger will, at the opening of the Reichsta
38 demand that the reform measures, the discussio
was dropped when Michaelis became Imperial Ch
taken up again.

Even though the outcome of the inner political battl
predicted, it excites everywhere the liveliest interest. If
win, one can expect a speedy end of the war with certai
lose, the end of the war is not in sight. In that case, th
neutrals will suffer just as much as blockaded Germa
allies.

(Here follows reproduction of slip marked p. 38

Für politische Reformen.

Amsterdam, 6. Sept. In Deutschland greift das Verlangen nach Reformen, die zum Frieden führen werden, immer mehr um sich. Trotz der Bemühungen der inspirirten Zeitungen, der Bewegung zwecks einer größeren Demokratisirung entgegenzuwirken, gewinnt das liberale Element täglich mehr an Boden. Infolge dessen kann es als zweifellos erachtet werden, daß mit dem Wiederzusammentritt des Reichstages die Frage von Reformen und ihrer Anwendung auf die Friedensvorschläge in den Vordergrund treten wird.

Von verschiedener Seite wird die Forderung gestellt, daß das deutsche Volk im eigenen Interesse die Kriegsziele der Alldeutschen zurückweisen und darauf bestehen soll, daß der Reichstag die Richtlinien für die auswärtige Politik festlegen soll. Der einzige Einwand, den die Conservativen und die Kriegspartei bisher ins Feld führen konnten, war der, daß Präsident Wilson sich in Deutschlands innere Angelegenheiten eingemischt habe. Die deutsche Nation müsse daher der Reform-Bewegung eine geschlossene Front entgegenstellen. Aber dies Argument fällt gegenüber der Ueberzeugung, daß ohne Reformen das Ende des Krieges nicht abzusehen ist, wenig ins Gewicht.

Mathias Erzberger wird mit jedem Tage mehr der Mann der Stunde. Er besitzt einen bedeutend größeren Einfluß als Reichskanzler Michaelis. Leute, die mit der innerpolitischen Lage Deutschlands genau vertraut sind, prophezeien, daß Erzberger in wenigen Wochen bereits den Sturz des Nachfolgers des früheren Reichskanzlers herbeigeführt haben wird.

Erzberger, der als Führer des Centrums mit den Plänen des Vatikans wohl vertraut ist, weiß, daß der Papst sich selbst gelobt hat, bis Weihnachten den Krieg zum Abschluß zu bringen, wenn das im Bereiche der Möglichkeit liegt. Er weiß aber auch, daß von einem Frieden keine Rede sein kann, solange in Deutschland die Kriegspartei die entscheidende Stimme hat.

Erzberger wird beim Wiederzusammentritt des Reichstages die Forderung

[illegible] Interesse die Kriegsziele der Alldeutschen zurückweisen und darauf bestehen soll, daß der Reichstag die Richtlinien für die auswärtige Politik festlegen soll. Der einzige Einwand, den die Conservativen und die Kriegspartei bisher ins Feld führen konnten, war der, daß Präsident Wilson sich in Deutschlands innere Angelegenheiten eingemischt habe. Die deutsche Nation müsse daher der Reform-Bewegung eine geschlossene Front entgegenstellen. Aber dies Argument fällt gegenüber der Ueberzeugung, daß ohne Reformen das Ende des Krieges nicht abzusehen ist, wenig ins Gewicht.

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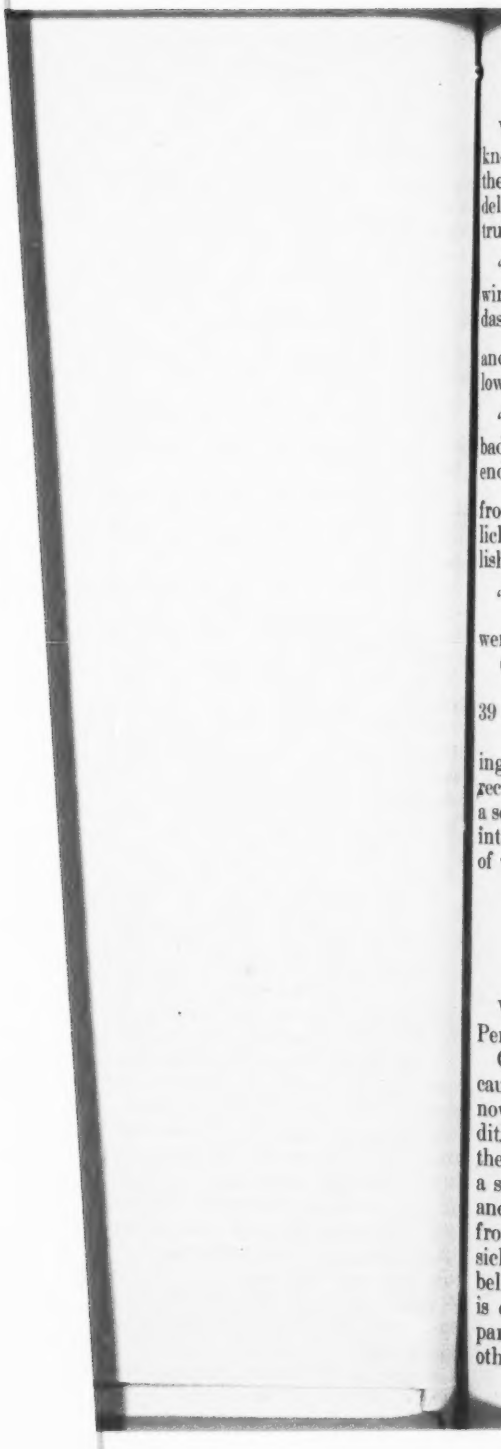
Erzberger wird beim Wiederzusammentritt des Reichstages die Forderung stellen, daß die Reformenmaßnahmen wieder aufgenommen werden, deren Berathung fallen gelassen wurde, als Michaelis Reichskanzler wurde.

Wenn sich der Ausgang des innerpolitischen Kampfes auch nicht voraussagen läßt, so erregt er doch überall das lebhafteste Interesse. Sollten die Reformer gewinnen, so ist ein schnelles Ende des Krieges mit Bestimmtheit zu erwarten. Verlieren sie, so ist das Ende des Krieges nicht abzusehen. Unter solchen Umständen würden die europäischen Neutralen gerade so zu leiden haben, wie das blockirte Deutschland und seine Verbündeten.

(k. 38)



hich said report was false, as the defendants then and there well
, in this, that the report of the original despatch from which
aid report was reproduced by the defendants, in the said "Phila-
ia Tageblatt," contained a sentence in the German language, a
and correct copy of which is as follows:—

ber dies Argument fällt gegenüber der verschlechterung der
chaftlichen Lage und der Ueberzeugung, dass ohne Reformen
Ende des Krieges nicht abzusehen ist, wenig in's Gewicht."

a true and correct translation of which into English is as fol-
—

ut this argument has little weight against the increasingly
economic conditions and the conviction that without reform the
f the war is not in sight."

which sentence the words "der beschlecterung der wirtchaft-
n Lage und," a full and correct translation of which into Eng-
s as follows:—

he increasingly bad economic conditions and"

omitted by the defendants in reproducing the said report.

) In that the said defendants did, on September 7, 1917, wil-
fully cause to be printed, published and circulated in and
through the columns of the said "Philadelphia Tageblatt," a
report with captions purporting to be a despatch from Wash-
n, dated September 6, in the German language, a true and cor-
opy of which report and captions, marked (12), is set forth on
arate sheet of paper facing this page, and is hereby incorporated
this page and made a part hereof; a true and correct translation
ich report and captions into English is as follows:—

What Does This Mean?

Many Suicides in Pershing's Army Reported.

ashington, Sept. 6.—An extraordinary percentage of suicides in
ing's army has been officially reported to the War Department.
the twelve deaths that have taken place so far four have been
d by suicide. Three men died in August; in September up to
all are suicides, and also every death in the American Expe-
nary Force since July can be traced to suicide. In every case
uicide was committed through shooting. Officials declare that
cide rate of 33 1/3% of all deaths has never happened before
they cannot find an adequate cause. The short death reports
Pershing's headquarters do not give any particulars. Home-
ess is not considered as a cause, although three of the victims
ged to the recently enlisted soldiers. The theory that suicide
ntagious has also been refuted because the cases happened in
of the force which were situated at a large distance from each
. The physical conditions under which Pershing's force lives

in France are known to the Department of War to be extraordinarily favorable and it is a puzzle what may have caused the suicides."

Which said report was false, as the defendants then and there well knew, in this, that the caption "Viele Selbstmorde in Pershing's Armee berichtet" ("Many Suicides in Pershing's Army Reported"), conveyed the impression that many more suicides had occurred than the facts as reported showed, and in that the report with caption from which the despatch was copied had as a single caption:—

"Selbstmorde in Pershing's Armee berichtet,"

and the defendants in their report inserted the word "Viele" ("Many").

(Here follows reproduction of slip marked p. 40.)

Was ſoll das?

Viele Selbſtmorde in Perſhing's Armee berichtet.

Waſhington. 6. Sept. Ein außergewöhnlicher Prozentſatz von Selbſtmorden in Perſhings Armee iſt offiziell an das Kriegs-Departement berichtet worden

Von den bisher erfolgten zwölf Todesfällen ſind vier durch Selbſtentleibung verurſacht worden. Im Auguſt ereigneten ſich drei Todesfälle, im September bisher einer und alle waren Selbſtmorde, es iſt alſo ſeit Juli jeder Todesfall in der amerikaniſchen Expeditionsarmee auf Selbſtmord zurückzuführen In jedem Falle erfolgte die Selbſtentleibung durch Erſchießen.

Offizielle behaupten, eine Selbſtmordrate von 33 1/3 Prozent der Geſammttodesfälle ſei noch nicht dageweſen und ſie wiſſen keine Gründe dafür anzugeben. Die kurzen Todesmeldungen aus Perſhings Hauptquartier ſagen nichts darüber. Heimweh wird nicht als Grund angeſehen, trotzdem drei der Lebensmüden zu den erſt jüngſt eingetretenen Soldaten gehören.

Auch die Theorie, daß Selbſtmord anſteckend wirke, wird verworfen, da die Selbſtentleibungen in Truppentheilen paſſirten, die räumlich von einander getrennt ſind. Die phyſiſchen Verhältniſſe, unter denen Perſhings Truppen in Frankreich leben, ſind dem Kriegs-Departement als außergewöhnlich günſtige bekannt, und man ſteht vor einem Räthſel, was die Selbſtmorde veranlaßt haben mag.«

(K. 40)

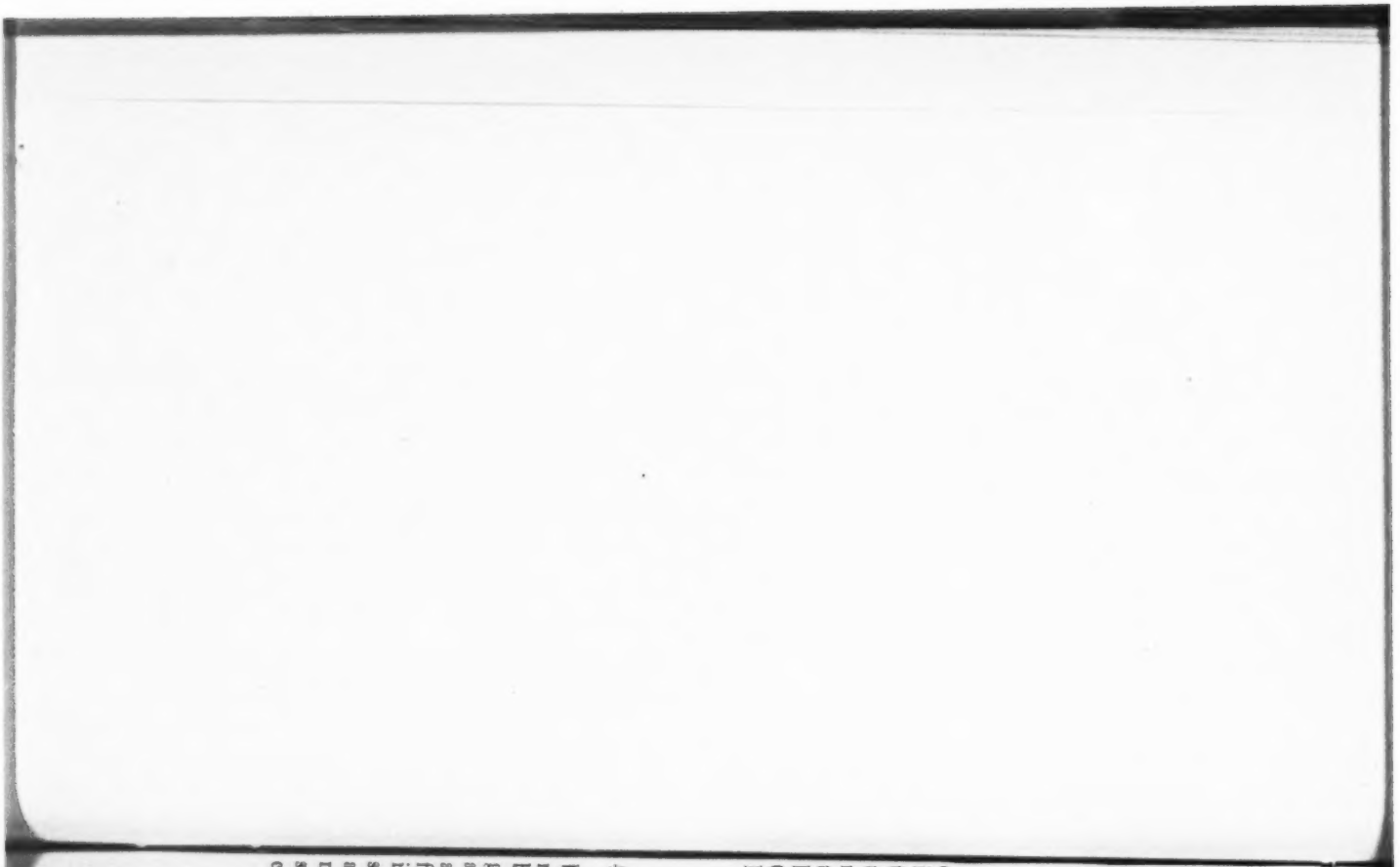
Kampfbereit?

St Petersburg, 7 Sept. Die ruſſiſche Oſtſee-Flotte wird Kronſtadt und Reval vertheidigen, und damit die ruſſiſche Hauptſtadt ſelbſt. Die Commandanten der beiden Feſtungen haben der proviſoriſchen Regierung dieſe Mittheilung gemacht. Ein großer Theil der Oſtſee-Flotte befand ſich unter der Controlle der Maximaliſten, die bisher eine Kerenſky gegneriſche Haltung eingenommen haben. Auch die Commandanten von Sveaborg und Helſingfors in Finnland haben der Regierung telegraphiſch die Verſicherung zugehen laſſen, daß die Oſtſee-Flotte ihrer Bereitwilligkeit Ausdruck gegeben hat, verzweifelten Widerſtand zu leiſten, ſollten die Deutſchen einen Flottenangriff auf die ruſſiſchen Stützpunkte zwiſchen Riga und der Hauptſtadt machen.

Unterſuchung des Falles von Riga

Auf dem Rückzuge von Riga verwüſten die Ruſſen das Land durch das ſie ziehen, um den Deutſchen das Vorrücken zu erſchweren. Landſtraßen werden zerſtört. Brücken geſprengt und Vorräthe verbrannt. Eine Spezial-Commiſſion iſt von Premierminiſter Kerenſky eingeſetzt worden, um den Fall von Riga zu unterſuchen. Soweit ſich bisher ermitteln ließ, haben nur zwei Regimenter ohne Kampf ihre Stellungen aufgegeben, die übrigen Truppen haben den anſtürmenden Deutſchen tapferen Widerſtand entgegengeſetzt. Der Rückzug von Riga erfolgte in geordneter Weiſe, trotz der Verfolgung durch drei deutſche Armeen. Die erſte, die an der Küſte im Raume von Dünaburg vorrückt, ſucht offenbar Verna am Rigaiſchen Meerbuſen zu erreichen. Die zweite deutſche Armee rückt auf der Pſkover Landſtraße vor, um eine Umgehungsbewegung auszuführen, während die dritte energiſche Anſtrengungen macht, in nordöſtlicher Richtung gegen Oſtrov vorzudringen. Die Deutſchen laſſen Zeichen von Nervoſität beim Vorrücken durch das ſumpfige und mit Seen beſäte Terrain erkennen, die durch den ruſſiſchen Widerſtand vermehrt werden.

(k. 41)



(*m*) In that the said defendants did, on September 8, 1917, wil-
lly cause to be printed, published and circulated in and through
e columns of the said "Philadelphia Tageblatt," a report purport-
g to be a despatch from St. Petersburg, dated September 7 in the
rman language, a true and correct copy of which report with the
ption over the same marked (13), is set forth on a separate sheet of
per facing this page, and is hereby incorporated into this count
d made a part hereof; a true and correct translation of which
port and caption into English is as follows:—

Ready for the Fray?

St. Petersburg, September 7th.—The Russian Baltic Fleet will
fend Kronstadt and Reval, and through them the Russian capital
lf. The commanders of the two fortresses have made this report
the provisional government. A large part of the Baltic fleet was
der control of the Maximalists, who hitherto have opposed Ke-
sky. The commanders of Sveaborg and Helsingfors have also
egraphed their assurance to the government that the Baltic fleet
s expressed its willingness to offer desperate resistance, in case the
rmans should make a naval attack upon the strongholds between
ga and the capital.

Investigation of the Fall of Riga.

The Russians devastated the land through which they re-
treated from Riga, in order to impede the German advance.
Roads were broken up, bridges destroyed and provisions
rned. A special commission has been set up by Premier Ke-
sky to investigate the fall of Riga. As far as reports have so far
n permitted to appear, it is established that only two regiments
e up their positions without fighting, and the others offered the
cking Germans bold resistance. The retreat was carried out in
orderly manner, in spite of pursuit by the German armies. The
t of these, advancing along the coast in the region of Dunaburg,
pparently endeavoring to reach Berna, on the Gulf of Riga. The
ond Germany army is pressing along the Pskoff road to execute
urning movement, while the third is energetically pushing in a
theasterly direction against Ostroff. The Germans are showing
ns of nervousness in advancing through this marshy lake-strewn
ntry, which are increased by the Russian resistance.

(Here follows reproduction of slip marked p. 41.)

Which said report was false, as the defendants then and ther well knew, in this, that the report of the original despatch fron which the said report was reproduced by the defendants, in the sai "Philadelphia Tageblatt," contained a sentence in the German lan guage, a true and correct copy of which is as follows:

"Daraus gehthervor, dass der Fall von Riga die feindlichen politi schen Faktionen in Russland geeinigt hat."

and a true and correct translation of which into English is as fol lows:

"From this it can be concluded that the fall of Riga has united th opposing political factions in Russia."

Which sentence in the original despatch formed the conclusion o the first paragraph and was a material portion thereof, which sen tence was omitted by the defendants in reproducing the said re port.

42 And the said defendants did cause the said reports to be s printed, published and circulated with intent in them, th said defendants, to promote the success of the enemies of the Unite States, to wit, the said Imperial German Government.

Contrary to the form of the Act of Congress in such case mad and provided and against the peace and dignity of the United State of America.

Count 2.

And the Grand Inquest aforesaid, inquiring as aforesaid, upon their oaths and affirmations as aforesaid, do further present:

That, on, to wit: July 4, 1917, the "Philadelphia Tageblatt" wa a newspaper printed and published in the German language in Philadelphia by the Philadelphia Tageblatt Publishing Association, a corporation incorporated and existing under the laws of the State of Pennsylvania; that on the date last aforesaid one Peter Schaefer was President, and one Paul Vogel was Treasurer of the said corpora tion; that on the date last aforesaid one Louis Werner was chief ed itor, one Martin Darkow was managing editor, and one Herman Lemke was business manager of the said newspaper;

That on the date last aforesaid the United States of America was at war with the Imperial German Government;

That on said date last aforesaid at Philadelphia in the Eastern District of Pennsylvania, the said Peter Schaefer, Paul Vogel, Louis Werner, Martin Darkow and Herman Lemke, hereinafter called the defendants, did knowingly, wilfully and unlawfully obstruct the re cruiting and enlistment service of the United States, to the injury of the United States, in that they did cause to be printed, published and circulated, on the said date, an issue of the said "Philadelphia Tage blatt" containing an editorial in the German language, a true and correct copy of which editorial marked U, is set forth on a separate sheet of paper facing this page, and is hereby incorporated into this count and made a part hereof; a true and correct translation of which editorial into English is as follows:

Zum vierten Juli.

Dies iſt der Tag, an welchem das amerikaniſche Volk ſeine Rebellion gegen die britiſche Tyrannei feiert. Und heute weht die Flagge Englands auf der Unabhängigkeitshalle in Philadelphia. Die Oratoren des 4. Juli haben heute ein ſaures Stück Arbeit. Sie müſſen den Leuten erſt klar machen, wie glorreich und wie nothwendig es war, das Joch Englands abzuſchütteln um ihm nachher plauſibel zu machen, daß dieſes England jetzt der Vorkämpfer der Freiheit ſei, hinter dem wir mit Gut und Blut ſtehen müſſen. Der Redner glaubt das natürlich ſelbſt nicht und ſeine Zuhörer glauben es noch weniger. Die Feier des 4. Juli, die ſeit langem eine leere Formalität geweſen iſt, wird dieſes Jahr zu einer elenden Farce.

Nachdem die amerikaniſche Colonie ſich einmal losgeriſſen, mußte England darauf verzichten, Verſuche zu ihrer Wiedereroberung zu unternehmen, denn es hatte in Europa wichtigeres zu thun. Es mußte verhindern, daß Frankreich die Weltherrſchaft an ſich riß. Das nahm ſeine Kraft lange Zeit in Anſpruch und als das Ziel erreicht, waren die Ver. Staaten ſo erſtarkt, daß nichts gegen ſie unternommen werden konnte. Aber unfreundlich und mißgünſtig war Großbritannien gegen dieſes Land ſtets und wäre es nach ſeinen Wünſchen gegangen, dann wäre die Union im Bürgerkrieg zertrümmert worden. Die herrſchenden Klaſſen Englands haben die Ver. Staaten ſtets verachtet und gehaßt und hegen heute, wo ſie ihm ſchmeicheln, noch dieſelben Gefühle gegen ſie.

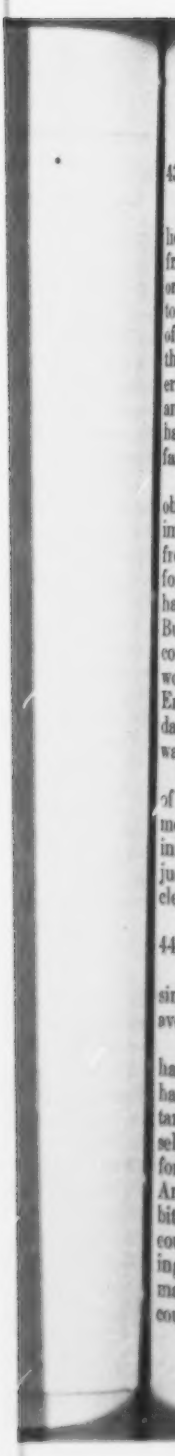
Als Retter in der Noth ſind die Ver. Staaten unter dem Regime Wilſon's England beigeſprungen. Sie verſchafften ihm die Mittel zur Kriegsführung und als das noch nicht ausreichte, ſprangen ſie ſelber in den Krieg ein. Die Geſchichte wird darüber einmal ihr Urtheil ſprechen. Vorweg aber kann ſchon wenigſtens der mildernde Umſtand geltend gemacht werden, daß das Volk der Ver. Staaten dieſen Krieg nicht wollte, daß er ohne ſeine Zuſtimmung angefangen wurde und daß es ihn in ſeiner großen Mehrheit heute noch nicht billigt. Wenn man das beſtreiten will, mache man einfach die Probe daran, indem man das Volk abſtimmen läßt.

wird dieſes Jahr zu einer elenden Farce.

Nachdem die amerikaniſche Colonie ſich einmal losgeriſſen, mußte England darauf verzichten, Verſuche zu ihrer Wiedereroberung zu unternehmen, denn es hatte in Europa wichtigeres zu thun. Es mußte verhindern, daß Frankreich die Weltherrſchaft an ſich riß. Das nahm ſeine Kraft lange Zeit in Anſpruch und als das Ziel erreicht, waren die Ver. Staaten ſo erſtarkt, daß nichts gegen ſie unternommen werden konnte. Aber unfreundlich und mißgünſtig war Großbritannien gegen dieſes Land ſtets und wäre es nach ſeinen Wünſchen gegangen, dann wäre die Union im Bürgerkrieg zertrümmert worden. Die herrſchenden Klaſſen Englands haben die Ver. Staaten ſtets verachtet und gehaßt und hegen heute, wo ſie ihm ſchmeicheln, noch dieſelben Gefühle gegen ſie.

Als Retter in der Noth ſind die Ver. Staaten unter dem Regime Wilſon's England beigeſprungen Sie verſchafften ihm die Mittel zur Kriegsführung und als das noch nicht ausreichte, ſprangen ſie ſelber in den Krieg ein. Die Geſchichte wird darüber einmal ihr Urtheil ſprechen. Vorweg aber kann ſchon wenigſtens der mildernde Umſtand geltend gemacht werden, daß das Volk der Ver. Staaten dieſen Krieg nicht wollte, daß er ohne ſeine Zuſtimmung angefangen wurde und daß es ihn in ſeiner großen Mehrheit heute noch nicht billigt. Wenn man das beſtreiten will, mache man einfach die Probe daran, indem man das Volk abſtimmen läßt. Man wird ſich hüten, es zu thun.

Allein das Volk kann ſich auch nach einer anderen Weiſe vernehmlich machen. Es hat ſich das Recht erkämpft, ſeiner Meinung freien Ausdruck zu geben. Seinen Widerwillen gegen die Hilfeleiſtung für den „Erbfeind" hat es bereits Ausdruck gegeben durch die Weigerung ſeiner jungen Leute, ſich freiwillig für den Krieg zu ſtellen. Dabei wird es nicht bleiben. Aus dem Volk heraus wird der Ruf nach Frieden kommen und man wird auf ihn hören müſſen. Und je früher, deſto beſſer. Noch iſt kein Blut gefloſſen, kein Haß und keine Verbitterung gegen Deutſchland entſtanden, das dieſem Lande nie etwas Uebles zugefügt, aber Millionen ſeiner Söhne zu ſeinem Aufbau herübergeſchickt hat. Je ſchneller ſich das amerikaniſche Volk beſinnt und Frieden verlangt, deſto beſſer und ehrenhafter für dieſes Land.



For the Fourth of July.

his is the day on which the American people celebrate its rebel- against British tyranny. And to-day the English flag waves n Independence Hall in Philadelphia. The Fourth of July ors have a sour piece of work to-day. They must first make clear e people how glorious and necessary it was to shake off the yoke ngland to make it seem plausible later that this England is now champion of freedom, behind whom we must stand with prop- and life. Of course the speaker does not believe that himself still less do his hearers. The Fourth of July celebration, which long been an empty formality, will this year become a miserable e.

fter the American colonies had once torn loose, England was ged to forego making attempts to reconquer them for it had more ortant affairs to attend to in Europe. It had to prevent France usurping the mastery of the world. That engaged its powers a long time and when the object was achieved the United States become so strong that nothing could be undertaken against them. Great Britain has always been hostile and unfavorable to this try, and if things had gone according to its wish, the Union ld have been shattered in the Civil War. The ruling classes of land have always despised and hated the United States, and to- while they flatter them, they still cherish the same feeling to- l them.

nder Wilson's regime the United States has sprung to the side ngland as its savior in time of need. They provided it with the ns to carry on the war and when that wasn't enough, they sprang the war themselves. History will sometimes pronounce its ment upon this. For the present, however, we can at least make the mitigating circumstances that the people of the United States did not want this war, that it was commenced without their consent, and that the great majority of them do not ap- prove of it even to-day. If this is disputed it can be tested by ly letting the people vote upon it. But that will be carefully led.

at the people can make themselves heard in another way. They won the right to give free expression to their opinions. They already expressed their repugnance at giving aid to the heredi- enemy by the unwillingness of their young men to offer them- s as volunteers for the war. But it will not rest there. The call peace will come from the masses and will demand to be heard. the sooner the better. No blood has been shed yet, no hate nor rness has yet arisen against Germany, who has never done this try any harm, but has sent millions of her sons for its upbuild- The sooner the American people come to their senses and de- d peace, the better and more honorable it will be for the try.

(Here follows reproduction of slip marked p. 44.)

Contrary to the form of the Act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

Count 3.

And the Grand Inquest aforesaid, inquiring as aforesaid, upon their oaths and affirmations as aforesaid, do further present:

That, on, to wit: August 6, 1917, the "Philadelphia Tageblatt" was a newspaper printed and published in the German language in Philadelphia by the Philadelphia Tageblatt Publishing Association, a corporation incorporated and existing under the laws of the State of Pennsylvania; that on the date last aforesaid one Peter Schaefer was President, and one Paul Vogel was Treasurer of the said corporation; that on the date last aforesaid one Louis Werner was chief editor, one Martin Darkow was managing editor, and one Herman Lemke was business manager of the said newspaper;

45 That on the date last aforesaid the United States of America was at war with the Imperial German Government;

That on said date last aforesaid at Philadelphia in the Eastern District of Pennsylvania, the said Peter Schaefer, Paul Vogel, Louis Werner, Martin Darkow and Herman Lemke, hereinafter called the defendants, did knowingly, wilfully and unlawfully obstruct the recruiting and enlistment service of the United States, to the injury of the United States, in that they did cause to be printed, published and circulated on the said date, an issue of the said "Philadelphia Tageblatt" containing certain captions and article in the German language, a true and correct copy of which captions and article, marked GG, is set forth on a separate sheet of paper facing this page, and is hereby incorporated into this count, and made a part hereof, a true and correct translation of which captions and article into English is as follows:

"Yankee Bluff.

Professor Jenny Does Not Take the American Preparations for War Seriously.

Ambassador Paige Assures England That We Will Send Ten Million Men.

London, Aug. 5.—Ambassador Paige followed Lloyd George at Guild Hall in Plymouth, with a great speech. He declares there that the differences between England and the United States in former times were only of a superficial nature, and that both peoples are now united inseparably, to fight for freedom and against the Hydra of militarism. He assures his hearers that the United States is ready for all sacrifices in order to end the war victoriously, and that if necessary it will send ten million men to France.

Berlin, Aug. 5.—In the "Täglishe Rundschau," Professor

46 Jenny writes under the title "Americanism" as follows:—'Americans think in exaggerations and talk in superlatives.

Yankee Bluff.

Professor Jenny nimmt die amerikanischen Kriegsvorbereitungen nicht ernst.

Botschafter Page versichert England, daß wir zehn Millionen Mann senden werden.

London, 5. Aug. Nach Lloyd George ist nun der amerikanische Botschafter Page mit einer großen Rede vor der Guild Hall in Plymouth aufgetreten. Er hat dort erklärt, daß die Differenzen zwischen England und den Vereinigten Staaten in früheren Zeiten blos oberflächlicher Natur waren und daß die beiden Völker jetzt unzertrennlich vereint sind, um für die Freiheit und gegen die Hydra des Militarismus zu kämpfen. Er versicherte seinen Zuhörern, daß die Ver. Staaten zu allen Opfern bereit sind, um den Krieg siegreich zu beenden und daß sie nöthigenfalls zehn Millionen Mann nach Frankreich senden wollen.

Berlin, 5. Aug. In der „Täglichen Rundschau" schreibt Professor Jenny unter dem Titel „Americanismus" wie folgt: „Amerikaner denken in Uebertreibungen und sprechen in Superlativen. Selbst der Botschafter Andrew White verfällt in seinen Memoiren bei verhältnißmäßig unbedeutenden Vorfällen in Superlative, erklärt sie für die beachtenswerthesten Vorfälle seines Lebens und betheuert, daß gewisse Personen, die anderen als einfache Durchschnittsmenschen erscheinen müssen, auf ihn einen unauslöschlichen Eindruck gemacht haben.

Aus der Armee von zehn Millionen Mann ist eine Freiwilligen-Armee von 120,000 Mann geworden, während die neue Constriptions-Armee von 585,000 Mann nicht einmal in sechs Monaten für den Drill vor der Front parat sein wird. Die 100,000 Luftschiffe sind auf 20,000 und dann auf 3000 reduzirt worden, welche die Amerikaner für den nächsten

verſicherte ſeinen Zuhörern, daß die Ver. Staaten zu allen Opfern bereit ſind, um den Krieg ſiegreich zu beenden und daß ſie nöthigenfalls zehn Millionen Mann nach Frankreich ſenden wollen.

Berlin, 5. Aug. In der „Täglichen Rundſchau“ ſchreibt Profeſſor Jenny unter dem Titel „Americanismus“ wie folgt: „Amerikaner denken in Uebertreibungen und ſprechen in Superlativen. Selbſt der Botſchafter Andrew White verfällt in ſeinen Memoiren bei verhältnißmäßig unbedeutenden Vorfällen in Superlative, erklärt ſie für die beachtenswertheſten Vorfälle ſeines Lebens und betheuert, daß gewiſſe Perſonen, die anderen als einfache Durchſchnittsmenſchen erſcheinen müſſen, auf ihn einen unauslöſchlichen Eindruck gemacht haben.

Aus der Armee von zehn Millionen Mann iſt eine Freiwilligen-Armee von 120,000 Mann geworden, während die neue Conſkriptions-Armee von 565,000 Mann nicht einmal in ſechs Monaten für hin, daß jetzt, wo die Amerikaner etwas Tonnage zuſammenkratzen können, die Truppen nicht parat ſind, und wenn ſie die Truppen parat haben werden wird die Tonnage nicht beiſammen ſein.

Die Zehn-Millionen-Armee und die 100,000 Luftſchiffe, die Deutſchland vernichten ſollten, haben ſich als waſchechte amerikaniſche Prahlerei herausgeſtellt. Es iſt beachtenswerth, wie ſehr die Yankees ihre Häſſer ausſchreien können, ohne ſich den Mund zu verrenken. Das entſpricht ihrer geiſtigen Capacität. Sie erfreuen ſich einer Lügenhaftigkeit, die in beachtenswerther Weiſe einen Mangel an Gedanken hinter einem Ueberreichthum an Worten zu verdecken weiß. Allein eines ſchönen Tages, wenn ſie mit dem Prahlen und Bluffen nicht aufhören, könnte es ihnen paſſiren, daß ſie die Mundſperre kriegen, für die es kein beſſeres Gegenmittel giebt, als eine geſunde Ohrfeige. Uebrigens iſt gar nicht anzunehmen, daß die Amerikaner es wirklich mit dem Kriege ernſt nehmen. Niemand wird ſich wundern, wenn ſie tauſend und eine Entſchuldigungen finden, um an dem europäiſchen Kriege keinen thätigen Antheil nehmen zu müſſen.

(K. 47)

Even Ambassador Andrew White in his Memoirs falls into superlatives in comparatively insignificant cases. He speaks of them as the most important events of his life and maintains that certain people have made an indelible impression on him, whom others consider to be ordinary average men.

The army of ten million men has dwindled to a volunteer army of 120,000; while the new conscripted army of 565,000 will not even be ready to begin drilling for the front in six months. The hundred thousand air ships were reduced to 20,000 and then to 3,000, which the Americans hope to have ready for next summer if they find the right model for them. As for the thousands of ships that were to be sent across the ocean, America, six months after the declaration of war, has not yet decided whether they are to be wood or steel ships; so far not even the keel of one ship has been laid. It amounts to this that now when the Americans can scrape some tonnage together, the troops are not ready, and when they have the troops ready, the tonnage will not be available.

The army of ten million and the hundred thousand airships which were to annihilate Germany, have proved to be American boasts which will not stand washing. It is worthy to note how much the Yankees can yell their throats out without spraining their mouths. This is in accord with their spiritual quality. They enjoy a capacity for lying, which is able to conceal to a remarkable degree a lack of thought behind a superfluity of words.

But some fine day, if they do not stop their boasting and bluffing, it might happen to them that they get the lockjaw, for which there is no better relief than a good box on the ear. Moreover it is not to be assumed that the Americans are really in earnest with the war. No one would be surprised if they found a thousand and one excuses for taking no active part in the European War.'"

(Here follows reproduction of slip marked p. 47.)

Contrary to the form of the Act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

Count 4.

And the Grand Inquest aforesaid, inquiring as aforesaid, upon their oaths and affirmations as aforesaid, do further present:

That, on, to wit: July 7, 1917, the "Philadelphia Tageblatt" was a newspaper printed and published in the German language in Philadelphia by the Philadelphia Tageblatt Publishing Association, a corporation incorporated and existing under the laws of the State of Pennsylvania; that on the date last aforesaid one Peter Schaefer was President, and one Paul Vogel was Treasurer of the said corporation; that on the date last aforesaid one Louis Werner was chief editor, one Martin Darkow was managing editor, and one Herman Lemke was business manager of the said newspaper;

That on the date last aforesaid the United States of America was at war with the Imperial German Government;

That on said date last aforesaid at Philadelphia in the Eastern District of Pennsylvania, the said Peter Schaefer, Paul Vogel, Louis Werner, Martin Darkow and Herman Lemke, hereinafter called the defendants, did knowingly, wilfully and unlawfully obstruct the recruiting and enlistment service of the United States, to the injury of the United States, in that they did cause to be printed, published and circulated, on the said date, an issue of the said "Philadelphia Tageblatt" containing an editorial, with caption, in the German language, a true and correct copy of which editorial with caption, marked W, is set forth on a separate sheet of paper facing this
48 page, and is hereby incorporated into this count, and made a part hereof; and a true and correct translation of which editorial with caption into English is as follows:

"The Failure of Recruiting.

The failure in the recruiting of 700,000 men for our standing army is admitted by the American Press. With all kinds of confused phrases they try to get around the facts, but they knowingly are careful not to state the principal, yes, the sole reason for the lack of volunteers. Some scattered newspapers point out with particular stress the lack of participation in the Southern States. 'Our young white men in the South do not seem to care very much for the regular army, and the regiments of the National Guard are nowhere filled up, and recruiting for them is at a very low ebb,' says one paper.

It is exactly so. The indifference, yes, even the open refusal of the natives throughout the country is especially large. Among the recruits we find a strikingly large percentage of foreigners, that is to say, men born abroad, among whom especially are to be found the Italians taking the first place to the extent of about twenty per cent. The South, for the largest part, contains those elements that may be called purely American, for the hyphenated are but very scantily

Der Fehlſchlag der Rekrutirung.

Der Fehlſchlag der Rekrutirung von 70,000 Mann für die ſtehende Armee wird von der amerikaniſchen Preſſe zugeſtanden. Sie drückt ſich mit allen möglichen Verlegenheitsphraſen um die Thatſache herum, hütet ſich aber wohlweislich, die hauptſächlichſte, ja die einzige Urſache für dieſe Abneigung anzugeben. Mit beſonderem Nachdruck weiſen einzelne Blätter auf die mangelhafte Betheiligung der ſüdlichen Staaten hin. „Die weißen jungen Leute im Süden ſcheinen nicht viel um die Regulären zu geben, und die Regimenter der Nationalgarde ſind nirgends voll, und die Rekrutirung dazu befindet ſich in tiefer Ebbe!“ — ſagt ein Blatt. Stimmt durchaus. Die Gleichgiltigkeit, ja die offene Ablehnung der eingeborenen Bevölkerung im ganzen Lande iſt beſonders groß. Unter den Rekruten befindet ſich ein auffallend großer Prozentſatz Fremder, d. h. Männer, die im Auslande geboren wurden, worunter beſonders die Italiener mit 20 Prozent den erſten Platz einnehmen. Der Süden enthält ſicherlich zum allergrößten Theil das, was man rein amerikaniſche Bevölkerung nennen kann, denn das Vindeſtrich-Element iſt dort ſehr ſpärlich vertreten. Dazu kommt, daß der Süden im Sattel iſt, daß er ſeit vier Jahren die Geſetze macht und den Norden die Steuern zahlen läßt, — man hätte alſo wohl auf eine lebhaftere Theilnahme an der Rekrutirung rechnen können. Und doch blieb ſie aus, dort wie im Oſten.

Die Reklame hatte mit Hochdruck gearbeitet. Man hatte verſucht, den Patriotismus auf alle mögliche Weiſe anzuſtacheln, hatte Deutſchland als den Verbrecher gegen alle Menſchenrechte und internationale Rechte hingeſtellt, alles vergeblich. Weder tönende Phraſen noch die offenbar als unwahr erkannten Anſchuldigungen gegen Deutſchland hatten Erfolg, die Rekruten kamen nicht. Der Grund dafür iſt einfach genug, der Ausfall der Congreßwahl in Indiana läßt ihn deutlich genug erkennen, man will ihn aber in Waſhington nicht ſehen; Der Grund iſt einfach der, daß das Volk in ſeiner ungeheuren Mehrheit dieſen Krieg für Englands Intereſſe nicht billigt, und daß der Amerikaner, dem man Feigheit ſonſt gewiß nicht vorwerfen kann, nicht Luſt hat, ſich für britiſche Weltherrſchaftsgelüſte todt ſchießen zu laſſen. Das Volk hat inſtinctiv erkannt und gefühlt, daß die Englands-Politik der Regierung ein Fehler iſt, der dem Lande nur Nachtheile bringen kann, und thut, was es allein noch thun kann, da man ſeinen Willen zuvor nicht einholte — es macht nicht mit!

(h. 49

presented down there. In addition, the South now is in the saddle, ving for the last four years made the laws and let the North pay e taxes. Considering it all in all, there might have been expected more enthusiastic participation in recruiting, and yet the South gged behind, just as did the East. The advertising campaign was orked at high pressure. All sorts of means were tried to stir up triotism. Germany was represented as a violator of all human rights and all international law, yet all in vain. Neither the resounding praises nor the obviously false accusations against Germany were of any avail. The recruits did not materialize. he cause is simple enough. The result of the Congressional elec- on in Indiana makes it perfectly clear. But in Washington they o not want to see it. The reason is simply that the overwhelming ajority of the people here do not approve of waging this war for e benefit of England, and that the American, who certainly cannot e called a coward, does not care to allow himself to be shot to satisfy ritish lust for the mastery of the world. The people instinctively cognize and feel that the pro-British policy of the Government,—is n error, which can bring nothing but injury upon this country. he nation therefore is doing the only thing it still can do, since its esires were not consulted at first. It refuses to take part."

(Here follows reproduction of slip marked p. 49.)

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Contrary to the form of the Act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

Count 5.

And the Grand Inquest aforesaid, inquiring as aforesaid, upon their oaths and affirmations as aforesaid, do further present:

That on, to wit: on September 3, 1917, the "Philadelphia Tageblatt" was a newspaper printed and published in the German language in Philadelphia by the Philadelphia Tageblatt Publishing Association, a corporation incorporated and existing under the laws of the State of Pennsylvania; that on the date last aforesaid one Peter Schaefer was President, and one Paul Vogel was Treasurer of the said corporation; that on the date last aforesaid one Louis Werner was chief editor, one Martin Darkow was managing editor, and one Herman Lemke was business manager of the said newspaper;

50 That on the date last aforesaid, the United States of America was at war with the Imperial German Government;

That on the date last aforesaid, at Philadelphia, in the Eastern District of Pennsylvania, the said Peter Schaefer, Paul Vogel, Louis Werner, Martin Darkow and Herman Lemke, hereinafter called the defendants, did knowingly, wilfully and unlawfully make and convey a false report and statement, with intent to promote the success of the enemies of the United States, to wit: the said Imperial German Government, in that the said defendants did, on the date last aforesaid, wilfully cause to be printed, published and circulated in and through the columns of the said "Philadelphia Tageblatt" a report purporting to be a dispatch from Amsterdam dated September 2 in the German language, a true and correct copy of which report, with the caption over the same, marked (9), is set forth on a separate sheet of paper facing this page, and is hereby incorporated into this count and made a part hereof; a true and correct translation of which report and caption into English is as follows:

"Further Economies.

"Amsterdam, September 2.—It has been reported here that permission to export the wheat and flour on the ships held in New York has been refused. Information to this effect is contained in an official proclamation of the latest cut in bread rations and of the need for economy which his reached the civil authorities: This document says: 'We know now with certainty that we cannot count upon the import of breadstuffs from America and that we must strive to make our own provisions suffice. In initiated circles it is said that under no conditions can the new American proposal be accepted, and that the foodstuffs may rot before the ships will be unloaded.' "

(Here follows reproduction of slip marked p. 50.)

Weitere Einſchränkungen.

Amſterdam, 2. Sept. Es wird hier gemeldet, daß der Export von Weizen und Mehl auf den in New York zurückgehaltenen Schiffen verweigert wurde. Eine diesbezügliche Mittheilung iſt in einer amtlichen Erklärung der jüngſten Brotrationen-Verringerung und der Aufforderung zur Einſchränkung enthalten, welche den Gemeindebehörden zuging. In derſelben heißt es: „Wir wiſſen nun beſtimmt, daß wir auf die Einfuhr von Brotgetreide aus Amerika nicht rechnen können, und daß wir uns bemühen müſſen, mit den eigenen Vorräthen auszukommen." — In eingeweihten Kreiſen heißt es, daß man auf den neuen Vorſchlag Amerikas unter keinen Umſtänden eingehen und das Getreide eher verfaulen laſſen wird, als die Schiffe auszuladen.

h: (50)

51 Which said report was false, as the defendants then and there well knew, in this, that the concluding sentence of the said report, a true and correct copy of which in the German language is as follows:

"In eingeweihten Kreisen heist es, dass man auf den neuen Vorschlag Amerikas unter keinen Umständen eingehen und das Getreide eher verfaulen lassen wird, als die Schiffe auszuladen,"

and a true and correct translation of which into English is as follows:

"In initiated circles it is said that under no conditions can the new American proposal be accepted and that the foodstuffs may rot before the ships will be unloaded,"

was not a part of the dispatch which the said report purported to be, but was added by the defendants in reproducing the said report.

Contrary to the form of the Act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

Count 6.

And the Grand Inquest aforesaid, inquiring as aforesaid, upon their oaths and affirmations as aforesaid, do further present:

That on, to wit: on August 22, 1917, the "Philadelphia Tageblatt" was a newspaper printed and published in the German language in Philadelphia by the Philadelphia Tageblatt Publishing Association, a corporation incorporated and existing under the laws of the State of Pennsylvania; that on the date last aforesaid one Peter Schaefer was President, and one Paul Vogel was Treasurer of the said corporation; that on the date last aforesaid one Louis Werner was chief editor, one Martin Darkow was managing editor,

52 and one Herman Lemke was business manager of the said newspaper;

That on the date last aforesaid the United States of America was at war with the Imperial German Government;

That on the date last aforesaid at Philadelphia, in the Eastern District of Pennsylvania, the said Peter Schaefer, Paul Vogel, Louis Werner, Martin Darkow and Herman Lemke, hereinafter called the defendants, did knowingly, wilfully and unlawfully make and convey a false report and statement, with intent to promote the success of the enemies of the United States, to wit: the said Imperial German Government, in that the said defendants did, on the date last aforesaid, wilfully cause to be printed, published and circulated in and through the columns of the said "Philadelphia Tageblatt" a report purporting to be a despatch from Washington dated August 21 in the German language, a true and correct copy of which report with the captions over the same, marked (8) is set forth on a separate sheet of paper facing this page, and is hereby incorporated into this count and made a part hereof; a true and correct translation of which report and caption into English is as follows:

"War of the Rich.

Senator La Follette Thinks They Ought Not to Make a Cent of Profit.

Hot Fight in the Senate Over Increased Taxation of War Profits.

Washington, August 21.—Taxation of riches in such a measure that the burdens of the cost of the war will be taken from the shoulders of the poor man was recommended today in the Senate by Senator La Follette in a long speech. He declared that the proposed two billion dollar bill as drawn up in the Senate's Committee
53 on Financial Affairs is impractical because it covers less than seventeen per cent. of the war expenses of the first year and from this would result the necessity of issuing bonds for billions of dollars. Bonds, however, mean the same as an increased cost of living, and one of the consequences would be that next winter bread riots could be expected in the big cities. He recommended the acceptance of amendments by which further taxation of large incomes and big war profits would be effected, which would bring the total amount of the bill to about $3,500,000,000.

Senator La Follette declared that wealth had never, in any war, offered itself on the altar of patriotism. He attacket the proposed issue of bonds and prophesied that the Liberty Bonds would eventually find their way into the hands of the rich, if they had not already done so. 'But,' he continued, 'this is not all, for war, and principally the sale of bonds, leads inevitably to inflation. This raises prices and through that the cost of living for the great mass of people is raised. Reason and experience teach us that the policy of financing a war for the most part by borrowing the necessary money, is in itself one of the worst financial burdens that war imposes upon men. But wealth is always a powerful factor in the Government. It fattens on war loans and war contracts as well as on speculation, which is not wanting in time of war. Upon these grounds the rich are always in favor of war, and when they have succeeded in bringing on a war, they are often powerful enough with ministers of war and parliaments and congresses to force the maximum of loans and to reduce taxation to a minimum by every possible intrigue and argument.

And that is the case with us in this war. Within thirty days after the declaration of war wealth had precipitated us into bond issues of unheard of size. Morgan came to the city, the press urged it, the administration commanded it, and Congress author-
54 ized the issue of five billions of untaxable Government bonds and two billions of interest bearing Treasury notes.'

Senator La Follette attached the program of the administration under which a new tax measure will be introduced next winter. 'Of what use is the postponement?' he asked, 'Whose interest is served if taxes on incomes and war profits are kept down and the masses are delivered over to the money lenders as security for an enormous

Krieg der Reichen.

Sie ſollen auch keinen Cent Profit machen, ſagt Senator La Follette.

Heißer Kampf im Senat wegen ſtärkerer Heranziehung der Kriegsgewinne zur Steuer.

Waſhington, 21. Aug. Heranziehung des Reichthums in ſolchem Maßſtabe, daß die Laſten der Kriegskoſten von den Schultern des armen Mannes genommen werden, wurde heute im Senat von Senator La Follette in längerer Rede befürwortet. Er erklärte, daß die Zweibillionen Dollar-Vorlage, wie ſie vom Finanzkomite des Senats entworfen worden iſt, unpraktiſch ſei, da ſie weniger als ſiebzehn Prozent der Kriegskoſten des erſten Jahres aufbringen und die Nothwendigkeit zur Folge haben würde, Bonds im Werthe von Milliarden Dollars auszugeben. Bonds aber ſeien mit höheren Koſten des Lebensunterhalts gleichbedeutend und eine der Folgen würde ſein, daß man im nächſten Winter in den Großſtädten Brotriots erwarten könne. Er empfahl die Annahme von Zuſätzen, durch welche weitere Abgaben von hohen Einkommen und großen Kriegsprofiten erzielt würden, wodurch der Geſammtertrag der Bill auf etwa $3,500,000,000 gebracht würde.

Senator La Follette erklärte, daß der Reichthum ſich niemals in irgend einem Kriege auf dem Altare des Patriotismus geopfert habe. Er griff die geplante Bondausgabe an und prophezeite, daß die Liberty Bonds ſchließlich ihren Weg in die Hände der Reichen finden würden, wenn ſie dies nicht bereits gethan hätten.

„Aber", fuhr er fort, „dies iſt nicht alles, denn Krieg, hauptſächlich der Verkauf von Bonds, zwingt unvermeidlich zur Inflation. Dieſe erhöht die Preiſe, dadurch die Koſten des Lebensunterhaltes für die Koſten des Lebensunterhaltes für die große Maſſe des Volkes erhöhend. Vernunft und Erfahrung lehren uns, daß die Politik der Finanzierung eines Krieges durch Borgen des größeren Theiles des nöthigen Geldes an und für ſich eine der ſchwerſten finanziellen Bürden iſt, ſind. Mehr aber als all Dies, ſie bezahlen die Kriegskoſten mit ihrem Blut und ihrem Leben und dem größten Opfer von allen — mit dem Blut und dem Leben ihrer Lieben.

„Wenn Brodreihen ein gewohnter Anblick in allen Städten des Landes ſind, wie es unvermeidlich ſein wird, wenn der gegenwärtige Preis der nothwendigſten Lebensbedürfniſſe während des kommenden Winters beibehalten wird, wenn Kälte und Hunger tägliche Gäſte bei tauſenden Familien ſein werden, welche bisher nur Behagen gekannt haben, ein Zuſtand, welcher ſicher während der kommenden Wintermonate beſtehen wird, falls keine Abhilfe gegen die gegenwärtigen Preiſe gefunden werden kann, dann wird es meiner Anſicht nach den Mitgliedern dieſes Kongreſſes wenig zur Genugthuung reichen, daß ſie zu der Erkenntniß kommen, daß ſie zu den Entbehrungen und den Leiden der Maſſen des Volkes beigetragen haben, indem ſie ſich geweigert haben, einen auch nur annähernd mäßigen Antheil der finanziellen Laſt den Reichen zuzuweiſen."

der schwersten finanziellen Bürden ist, welche der Krieg den Menschen auferlegt. Aber der Reichthum ist stets ein mächtiger Faktor in der Regierung. Er mästet sich an Kriegsanleihen und Kriegskontrakten, sowie an der Spekulation, an welcher es in Kriegszeiten nicht fehlt. Aus diesen Gründen ist der Reichthum stets für den Krieg. Und wenn es ihm gelungen ist, den Krieg herbeizuführen, dann ist er oft bei Kriegsministern und Parlamenten und Congressen mächtig genug, Anleihen an ihr Maximum zu forciren und durch alle möglichen Ränke und Argumente die Besteuerung auf ein Minimum zu treiben.

„Und so ist es bei uns in diesem Kriege der Fall. Innerhalb dreißig Tagen seit der Kriegserklärung hatte uns der Reichthum in Bondausgaben von unerhörter Höhe gestürzt. Morgan kam in die Stadt, die Presse drängte, die Administration empfahl und der Congreß ermächtigte die Ausgabe von fünf Milliarden nicht besteuerbarer Regierungsbonds und zwei Milliarden zinstragender Schatzamtsnoten.

Senator La Follette griff das Programm der Administration an, nach welchem im nächsten Winter eine neue Steuervorlage eingebracht werden soll. „Wozu soll der Aufschub dienen?" frug er. „Wessen Interesse soll damit gedient werden, daß die Steuerraten auf Einkommen und Kriegsprofite niedrig gehalten und die Massen an die Geldverleiher für eine enorme und tückische unverhältnißmäßige Bondausgabe als Hypothek hinterlegt werden?" Er bestand darauf, daß über die Politik der Finanzierung des Krieges sofort entschieden werden solle.

„Heute ist der Weg klar", erklärte er. Verzögerung, jetzt für entsprechende Besteuerung zu sorgen, würde nicht ein Irrthum sein. Es würde etwas Schlimmeres sein."

Senator La Follette gab einen Ueberblick über die Finanzgeschichte früherer amerikanischer Kriege. „Wir dürfen solche Irrthümer nicht wiederholen," sagte er. „Es würde blinde Thorheit sein, wenn wir nicht aus den Fehlern, welche wir in früheren Kriegen gemacht haben, Lehren ziehen wollten. Ein Fehler, welchen wir jetzt begehen, mag verhängnißvoll sein. Es wird uns sicherlich ungezählte Millionen Dollars und tausende und abertausende Menschenleben kosten, indem wir den Krieg unnöthigerweise verlängern.

„So lange ein Mann gefunden werden kann, welcher Kriegsprofite macht, bin ich dafür, daß der Theil solcher Profite, wie die Regierung ihn braucht, durch Besteuerung weggenommen wird, und die Regierung bedarf des ganzen Profites, ehe ein Penny durch Besteuerung der Last des Mannes aufgebürdet wird, welcher bereits unter der Last hoher Preise, welche durch den Krieg veranlaßt sind, schwankt. Dies mag ein in Kriegsfinanzen neues Prinzip sein, aber es ist das allerwenigste, was man den Massen des Volkes anzunehmen zumuthet, und es ist noch bedeutend weniger, als die einfache Gerechtigkeit für sie verlangen würde.

„Die große Masse des Volkes trägt die Kriegskosten, obschon sie direkt nicht mit einem Dollar dafür besteuert ist. Aber die große Masse des Volkes zahlt mit erhöhten Preisen und übertrieben langen Arbeitsstunden. Sie zahlt sie im Dienste nicht allein auf dem Schlachtfelde, sondern wo immer Männer und Frauen mit der schweren Alltagsarbeit beschäftigt

(h. 55)

and wickedly disproportionate issue of bonds?' He insisted that the policy of financing the war should at once be decided upon.

'To-day the way is clear,' he explained, 'hesitation to provide now for heavy taxes would not be a mistake, it would be something worse.'

Senator La Follette reviewed the financial history of previous American Wars. 'We must not repeat such mistakes,' he said, 'it would be blind madness if we did not learn from the mistakes that were made in previous wars. A mistake that we make now may be fatal. It would certainly cost us untold millions of dollars and thousands upon thousands of lives, as by it we would prolong the war unnecessarily.

As long as one man can be found who makes war profits, I am in favor of taking away in taxes such part of those profits as the Government requires, and the Government needs the whole of such profits before adding a penny to the taxation of people who are already staggering under heavy burdens by reason of the higher prices occasioned by the war. This may be a new principle in war financinf, but it is the least that one can do for the mass of the people, and it is considerably less than simple justice would demand for them.

The great mass of the people bear the costs of war, although they may not be directly taxed one dollar. The g-eat mass of the people pay in higher prices and prolonged hours of labor. They pay in service, not alone on the battle field, but wherever men and
55 women work hard all day long. But more than all this, they pay the cost of war with their blood, and their lives, and what is the greatest sacrifice of all, with the blood and lives of their loved ones.

If bread lines are a familiar sight in every city in the land, as they undoubtedly will be if the present prices of the most necessary supplies for living hold firm during the coming winter, if cold and hunger become daily guests with thousands of families, who, until now, have only known comfort, a condition which is certain to come about during the coming winter months, if no help against the present level of prices can be found, then it is my opinion that the members of this Congress will do little enough if they come to realize that they are adding to the privations and pains of the mass of the people if they hesitate to place even a fairly moderate portion of the financial burden upon the rich.' "

(Here follows reproduction of slip marked p. 55.)

Which said report was false, as the defendants then and th
well knew, in this, that while the reports of the original dispat
from which the said report was reproduced by the defendants,
the said "Philadelphia Tageblatt," contained a sentence in t
German language, a true and correct copy of which is as follows:

"Bonds aber seien mit höheren Kosten des Lebensunterhalts glei
bedeutend und eine der Folgen würde sein, dass man im nächst
Winter in dem Grosstädten Brotreihen erwarten könne,"

a true and correct translation of which into English is as follows:

"Bonds, however, mean the same as increased cost of living, a
one of the consequences would be that next winter breadlines co
be expected in the big cities."

56 the defendants in reproducing the sentence changed the wo
"Brotreihen" (bread lines) into the word "Brotriots" (bre
riots) so as to make the sentence in German read:

"Bonds aber seien mit höheren Kosten des Lebensunterha
gleichbedeutend und eine der Folgen würde sein dass man in näc
sten Winter in den Grosstädten Brotriots erwarten könne,"

and so as to make the dispatch read that Senator La Follette h
said in his speech that one of the consequences of the proposed iss
of bonds would be bread riots in the cities of the United States, wh
in truth and in fact he said in his speech that one of the consequen
would be bread lines in said cities.

Contrary to the form of the Act of Congress in such case made a
provided, and against the peace and dignity of the United States
America.

Count 7.

And the Grand Inquest aforesaid, inquiring as aforesaid, up
their oaths and affirmations as aforesaid, do further present:

That on July 10, 1917, the "Philadelphia Tageblatt" was a new
paper printed and published in the German language in Phil
delphia by the Philadelphia Tageblatt Publishing Association,
corporation incorporated and existing under the laws of the State
Pennsylvania; that on the date last aforesaid one Peter Schaefer w
President, and one Paul Vogel was Treasurer of the said corpor
tion; that on the date last aforesaid one Louis Werner was chi
editor, one Martin Darkow was managing editor, and one Herma
Lemke was business manager of the said newspaper;

That on the date last aforesaid the United States of America w
at war with the Imperial German Government;

That on the date last aforesaid at Philadelphia, in the Eastern Di
trict of Pennsylvania, the said Peter Schaefer, Paul Voge
57 Louis Werner, Martin Darkow and Herman Lemke, herei
after called the defendants, did knowingly, wilfully and u
lawfully make and convey a false report and statement, with inte
to promote the success of the enemies of the United States, to wi

Bestätigt.

Im Haag, 9. Juli. Mit der Eröffnung der allgemeinen Debatte im Reichstag steht Deutschland heute einer der ernstesten Regierungskrisen seit Beginn des Krieges gegenüber. Sämmtliche unruhigen Elemente, die von Zeit zu Zeit sich vermehrt haben, haben jetzt gemeinsame Sache gemacht. Es wird der geschicktesten Handhabung der Situation bedürfen, um einen Umsturz erster Größe zu verhindern. Es wird von Berlin berichtet, daß der Reichskanzler Dr. von Bethmann-Hollweg, wahrscheinlich heute, spätestens aber morgen, seine lange erwartete Friedensrede halten wird.

Die Ursachen der drohend sich gestaltenden Krisis werden, wie folgt, angegeben:

1. Die allgemeine Agitation zur Herbeiführung innerpolitischer Reformen.

2. Die zunehmende Erbitterung zwischen den Junkern und Sozialisten in Verbindung mit den Friedensbedingungen der Centralmächte.

3. Die zunehmende Unruhe im Volke über den Eintritt der Vereinigten Staaten in den Krieg.

Hier wird fast allgemein der Ansicht Ausdruck gegeben, daß der Rücktritt des Reichskanzlers, Dr. von Bethmann-Hollweg, unvermeidlich ist. Der Ernst der Lage geht auch daraus hervor, daß der Chef des Großen Generalstabes, Feldmarschall von Hindenburg, und sein Assistent, der General-Quartiermeister von Ludendorff, von dem östlichen Kriegsschauplatze nach Berlin geeilt sind, um mit dem Kaiser und dem Kanzler zu conferiren. Die Rede des einflußreichen Centrumsführers, des Reichstagsabgeordneten Erzberger, in welcher er im Namen seiner Partei sich nicht allein für sofortige Wahlreformen in Preußen, sondern auch im ganzen Reiche erklärte, hat nicht wenig dazu beigetragen, die Krisis noch zu verschärfen. Zu gleicher Zeit hatte Erzberger sich über Friedensschluß mit irgend einem Lande ausgesprochen, welches willens ist, ohne Annexion und Kriegsentschädigung Frieden zu schließen. Sollte der deutsche Reichskanzler außer Stande sein, den Sturm zu überstehen, so dürfte der deutsche Vice-Reichskanzler, Dr. Karl Helfferich, an seine Stelle treten.

(b. 58)

the said Imperial German Government, in that the said defendants did, on the date last aforesaid, wilfully cause to be printed, published and circulated in and through the columns of the said "Philadelphia Tageblatt" a report purporting to be a dispatch from The Hague dated July 9 in the German language, a true and correct copy of which report with the caption over the same, marked (2), is set forth on a separate sheet of paper facing this page, and is hereby incorporated into this count and made a part hereof; and a true and correct translation of which report and caption into English is as follows:

Confirmed.

The Hague, July 9.—With the opening of the general debate in the Reichstag, Germany faces one of the most serious cabinet crises since the beginning of the war. All the restless elements, which have increased from time to time, have now made common cause. The situation will require the most clever handling to prevent a great downfall. Berlin reports that the Chancellor, Dr. von Bethmann-Hollweg, will perhaps today, but at latest tomorrow make his long expected speech for peace. The causes of the crisis, now threatening are given as follows:

1. The general agitation for bringing about internal political reform.

2. The increasing bitterness between the Junkers and the Socialists in connection with the terms of peace of the Central powers.

3. The increasing unrest of the populace over the entrance of the United States into the war.

Expression is being given in all quarters here to the opinion that the retirement of the Imperial Chancellor, Dr. von Bethmann-Hollweg, is inevitable. The seriousness of the situation is also apparent from the fact that Field Marshal Hindenburg, the Chief of the great General Staff, and his assistant Quartermaster General von Ludendorff, have hurried to Berlin from the East front to confer with the Kaiser and the Chancellor. The sharpness of the crisis has been heightened not a little by the speech of the influential leader of the Centre in the Reichstag, Deputy Erzberger, in which, in the name of his party, he demanded immediate electoral reforms not only in Prussia but in the whole Empire. At the same time Erzberger urged the conclusion of a peace with any country that would be willing to make peace without annexations or indemnities If the German Imperial Chancellor is not able to survive the storm, his place will probably be taken by the Vice-Chancellor, Dr. Karl Helfferich."

58

(Here follows reproduction of slip marked p. 58.)

Which report was false, as the defendants then and there well know, in this that it stated: "Die zunehmende Unruhe im Volke über den eintritt Vereinigten Staaten in den Krieg" (the increasing unrest of the populace over the entrance of the United States into the war was one of three causes for the threatening crisis in Germany, whereas the dispatch from The Hague which the report purported to reproduce, in truth and in fact stated: "Die zunehmende Unruhe im Volke über den Fehlschlag des Tauchboot Krieges das ende des Konflikts herbeizuführen, und den Eintritt der Vereinigten Staaten in den Krieg" (the increasing unrest of the populace over the failure of the submarine war to force an end to the conflict and over the entrance of the United States into the war) was one of the causes of the said threatening crisis, the defendants thus omitting from their reproduction of the said dispatch a material portion of the same.

Contrary to the form of the Act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

Count 8.

59 And the Grand Inquest aforesaid, inquiring as aforesaid, upon their oaths and affirmations as aforesaid, do further present:

That on, to wit: on July 25, 1917, the "Philadelphia Tageblatt" was a newspaper printed and published in the German language in Philadelphia by the Philadelphia Tageblatt Publishing Association, a corporation incorporated and existing under the laws of the State of Pennsylvania; that on the date last aforesaid one Peter Schaefer was President, and one Paul Vogel was Treasurer of the said corporation; that on the date last aforesaid one Louis Werner was chief editor, one Martin Darkow was managing editor, and one Herman Lemke was business manager of the said newspaper;

That on the date last aforesaid the United States of America was at war with the Imperial German Government;

That on the date last aforesaid, at Philadelphia in the Eastern District of Pennsylvania, the said Peter Schaefer, Paul Vogel, Louis Werner, Martin Darkow and Herman Lemke, hereinafter called the defendants, did knowingly, wilfully and unlawfully make and convey a false report and statement with intent to promote the success of the enemies of the United States, to wit: the said Imperial German Government.

In that the said defendants did, on the date last aforesaid, wilfully cause to be printed, published and circulated in and through the columns of the said "Philadelphia Tageblatt" a report purporting to be a dispatch from Washington dated July 25th, in the German language, a true and correct copy of which report with the caption over the same, marked (4) is set forth on a separate sheet of paper facing this page and is hereby incorporated into this count and made a part hereof; a true and correct translation of which report and caption into English is as follows:

Was Waſhington hofft.

Waſhington, 24. Juli. Ob ſich in Rußland durch die Ernennung Kerenſky's zum Diktator eine Cataſtrophe abwenden laſſen wird, dürfte ſich erſt in einer Woche feſtſtellen laſſen. Es wird nach Anſicht hieſiger Sachverſtändiger ſolange dauern, bis ſich feſtſtellen läßt, ob die ruſſiſchen Armeen zu neuem Widerſtande veranlaßt und ſo verſtellt werden können, daß ſie ein weiteres Vordringen der deutſchen Verbündeten verhindern können. Wenn Kerenſky mit eiſerner Hand regiert und eine Wiederherſtellung der Disciplin erzwingt, ſo wird Rußland die Gefahr-Periode überdauern, wenn es auch ſeine vorgeſchobenen Stellungen einbüßen dürfte.

In amtlichen Kreiſen glaubt man an kein geeinigtes Rußland, ſolange nicht die vorgeſchlagene Conferenz der Entente zur Reviſion der Kriegsziele ſtattgefunden hat. Das wird im nächſten Monat geſchehen. Das Datum der Verhandlungen der Conferenz iſt noch nicht bekannt gegeben worden.

Die ruſſiſche Regierung beſteht auf Abhaltung der Conferenz, damit jeder ruſſiſche Soldat erfährt, wofür er kämpft. In der Einladung der ruſſiſchen Regierung war erklärt worden, daß ſie gegen Annexionen und gegen Kriegsentſchädigungen iſt, wie man ſie gewöhnlich auslegt, und daß Rußland aus dieſem Grunde um Reviſion einiger Kriegsziele erſuchen würde, wie ſie von den Alliirten bekannt gegeben wurden.

Sollte Kerenſky im Stande ſein, in Rußland die Ordnung wiederherzuſtellen und der deutſchen Offenſive Einhalt zu thun, ſo muß die Conferenz den Vorſchlägen und Anträgen Rußland's die größte Bedeutung beilegen.

Beamte der hieſigen ruſſiſchen Botſchaft erklärten heute, ſie hätten Depeſchen erhalten, aus denen hervorgehen, daß Premierminiſter Kerenſky der Meuterei der Truppen an der Front zum größeren Theile ein Ende gemacht habe. Es wird hier gehofft, daß es Kerenſky gelingen wird, Herr der geſammten Situation zu werden. Die Depeſchen der amerikaniſchen Botſchaft in St. Petersburg treffen immer noch mit großer Verſpätung ein und geben infolgedeſſen kein klares Bild der Lage.

(fl. 60)

"What Washington Hopes.

Washington, July 24.—Whether a catastrophe may be averted in Russia by the appointment of Kerensky to be dictator can only be determined after a week has passed; it will e that [illegible] in the opinion of local experts, before it can be deter-ned whether the Russian army can be made fit for a new resistance so disposed that they may be able to hinder a further advance of German allies. If Kerensky rules with an iron hand and forces e-establishment of discipline, then Russia will survive the period langer, even if it should have to lose its advanced positions.

n official circles no one believes in a united Russia as long as the posed conference of the entente for revision of the war aims has taken place; that will take place in the next month. The date he meetings of the conference has not yet been announced.

The Russian Government insists on the holding of the conference rder that every Russian soldier may know for what he is fighting. the invitation of the Russian Government it was explained that it gainst annexations and against war indemnities as they are usually derstood, and that Russia, for this reason, would ask for a revision some of the war aims as they have been announced by the allies. Should Kerensky be able to restore order in Russia and to put a p to the German offensive, then the conference must give great ght to Russia's proposals and offers.

Officials of the local Russian Embassy declared today they had ceived dispatches from which it is evident that Premier Kerensky , for the most part, put an end to the mutiny of the troops at the nt. It is hoped here that Kerensky will succeed in becoming ster of the whole situation. The dispatches of the American Em-sy in St. Petersburg continue to arrive only after great delay, and refore, do not give a clear picture of the situation.

(Here follows reproduction of slip marked p. 60.)

Which said report was false, as the defendants then and there
well knew, in this, that the report of the original dispatch
61 from which the said report was reproduced by the defendants
in the said "Philadelphia Tageblatt" contained certain para-
graphs, a true and correct copy of which in the German language is
as follows:

"Die Tatsache, dass Massenverhaftungen von Armee—sowohl wi
Marine—Offizieren gemacht werden, gilt als ein hoffnungsvolles Zei
chen. Es gilt als sicher, dass dass deutsche Gold mit vollen Hände
verteilt worden ist und die Verräter zur Verantwortung gezogen wer
den können, eine Gegenrevolution verhindert und die Situation gere
tet werden kann. Auch erscheint die Offenheit ermutigend, mit wel
cher Kerensky und seine Gehilfen die chaotishen Zustände an de
ganzen Front eingestanden haben. Ihre Warnungen werden sich
erlich eine gute Wirkung sowohl auf das russishe Volk wie auf di
Soldaten an der Front hervorrufen.

Premier Minister Lloyd George hat vor einiger Zeit die Erk
lärung abgegeben, dass Gross-Britannien Willens wäre, in der offen
sten Weise die gesammten Friedensbedingungen zu erörtern. Wenn
auf der Konferenz ein geeignetes Russland vertreten sin sollte, so is
es sehr wahrscheinlich, dass seine Forderungen ein grosses Gewich
haben werden,"

and a true and correct translation of which into English is as fo
lows:

"The fact that arrests en masse of army and navy officers are bein
made, is thought a hopeful sign. It is accepted as certain that Ge
man gold is being scattered with full hand and the traitors can b
brought to account, a counter-revolution prevented and the situatio
saved. The openness with which Kerensky and his aids have with
stood the chaotic conditions on the whole front, also appears en
couraging. Their warnings will surely have a good effect on th
Russian people as well as on the soldiers at the front.

62 Prime Minister Lloyd George, some time ago made th
statement that Great Britain was willing to publish the com
plete conditions of peace in the frankest manner. If a united Ru
sia should be represented in the conference, it is very probable tha
its demands will have great weight."

which paragraphs were omitted by the defendants in reproducin
the said report.

Contrary to the form of the Act of Congress in such case made an
provided, and against the peace and dignity of the United States o
America.

Count 9.

And the Grand Inquest aforesaid, inquiring as aforesaid, upo
their oaths and affirmations as aforesaid, do further present:

That heretofore, to wit, on all the dates hereinafter mentioned, th
"Philadelphia Tageblatt" and the "Philadelphia Sonntagsblatt

were newspapers printed and published in the German language in Philadelphia by the Philadelphia Tageblatt Publishing Association, a corporation incorporated and existing under the laws of the State of Pennsylvania;

That on the said dates, one Peter Schaefer was president and one Paul Vogel was treasurer of said corporation; that on the said date one Louis Werner was chief editor, one Martin Darkow was Managing Editor, and one Herman Lemke was business manager of the said newspapers;

That on all the said dates the United States was at war with the Imperial German Government;

That heretofore, to wit: on June 15, 1917, and on divers dates thereafter, the said Peter Schaefer, Paul Vogel, Louis Werner, Martin Darkow and Herman Lemke, hereinafter called the defendants, did conspire together, the United States being so at war;

63 (*a*) To wilfully make and convey false reports and false statements, with intent to interfere with the operation and success of the military and naval forces of the United States, and to promote the success of its enemies the said false reports and false statements to be made and conveyed in headlines, captions, articles, and editorials in the said "Philadelphia Tageblatt" and "Philadelphia Sonntagsblatt' which said newspapers so containing said headlines, captions, articles, and editorials the defendants would cause to be printed and published in Philadelphia and circulated in Philadelphia and elsewhere;

(*b*) To wilfully cause and attempt to cause insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States, to the injury of the service and of the United States, by printing and publishing in Philadelphia, and by circulating in Philadelphia and elsewhere, issues of the said "Philadelphia Tageblatt" and "Philadelphia Sonntagsblatt," containing headlines, captions, articles and editorials calculated and tending to induce men in the said military and naval forces to be guilty of the several offences aforesaid; and

(*c*) To wilfully obstruct the recruiting and enlistment service of the United States, to the injury of the service and of the United States, by printing and publishing in Philadelphia, and circulating in Philadelphia and elsewhere, issues of the said "Philadelphia Tageblatt" and "Philadelphia Sonntagsblatt," containing headlines, captions, articles and editorials calculated and tending to retard, interfere with, and diminish the recruiting, and to discourage the enlistment, of men into the military and naval services of the United States.

(1) And in order to effect the object of the said conspiracy, the defendants did thereafter, to wit, on July 2, 1917, at Phil-
64 adelphia aforesaid, cause to be printed and published an issue of the said "Philadelphia Tageblatt," containing an article entitled, "Die Meisterschüken" purporting to be a dispatch from London dated July 1.

(2) And further to effect the object of the said conspiracy, the defendants did thereafter, to wit, on July 2, 1917, at Philadelphia

aforesaid, pay to the United States at Philadelphia the sum of $0.30 for the mailing of copies of the issue of the said "Philadelphia Tageblatt."

(3) And in order to effect the object of the said conspiracy, thereafter, to wit: on July 10, 1917, at Philadelphia aforesaid, the defendants did cause to be printed, published and circulated an issue of the said "Philadelphia Tageblatt" containing an article in the German language which was false in that it purported to be a dispatch from The Hague assigning reasons for the unrest of the population in Germany, and in that the defendants omitted from the dispatch the fact as stated in the dispatch that one of the reasons for the said unrest was the failure of the submarine campaign as carried on by the German Government.

(4) And further to effect the object of the said conspiracy, the defendants did thereafter, to wit, on July 10, 1917, at Philadelphia aforesaid, pay to the United States, at Philadelphia the sum of $0.40 for the mailing of copies of the issue of the said "Philadelphia Tageblatt."

(5) And in order to effect the object of the said conspiracy, the defendants did thereafter, to wit, on July 25, 1917, at Philadelphia aforesaid, cause to be printed and published an issue of the said "Philadelphia Tageblatt" containing an article entitled "Was Washington hofft," purporting to be a dispatch from Washington dated July 24.

(6) And further to effect the object of the said conspiracy, the defendants did thereafter, to wit, on July 25, 1917, at Philadelphia aforesaid, pay to the United States, at Philadelphia, the sum of $0.30 for the mailing of copies of the issue of the said "Philadelphia Tageblatt."

65 (7) And in order to effect the object of the said conspiracy the defendants did thereafter, to wit, on August 6, 1917, at Philadelphia aforesaid, cause to be printed and published an issue of the said "Philadelphia Tageblatt" containing an article entitled "Yankee Bluff," purporting to be dispatches from London and Berlin, dated August 5.

(8) And further to effect the object of the said conspiracy, the defendants did thereafter, to wit, on August 6, 1917, at Philadelphia aforesaid, pay to the United States at Philadelphia the sum of $0.30 for the mailing of copies of the issue of the said "Philadelphia Tageblatt."

(9) And in order to effect the object of the said conspiracy, the defendants did thereafter, to wit, on August 22, 1917, at Philadelphia aforesaid, cause to be printed and published an issue of the said Philadelphia "Tageblatt" containing an article entitled "Krieg der Reichen," purporting to be a dispatch from Washington, dated August 21.

(10) And further to effect the object of the said conspiracy, the defendants did thereafter, to wit, on August 22, 1917, at Philadelphia aforesaid, pay to the United States at Philadelphia the sum of $0.30 for the mailing of copies of the issue of the said "Philadelphia Tageblatt."

(11) And in order to effect the object of the said conspiracy, the defendants did thereafter, to wit, on September 3, 1917, at Philadelphia aforesaid, cause to be printed and published an issue of the said "Philadelphia Tageblatt" containing an article entitled "Weitere Einschraufungen" purporting to be a dispatch from Amsterdam dated September 2.

(12) And further to effect the object of the said conspiracy, the defendants did thereafter, to wit, on September 3, 1917, at Philadelphia aforesaid, pay to the United States at Philadelphia the sum of $0.45 for the mailing of copies of the issue of the said "Philadelphia Tageblatt."

66 (13) And in order to effect the object of the said conspiracy thereafter, to wit: on September 7th, 1917, at Philadelphia aforesaid, the defendants did cause to be printed an issue of the said "Philadelphia Tageblatt" containing an article purporting to be a dispatch from Washington dated September 6th, 1917, entitled "Viele Selbstmorde in Pershing's Armee berichtet."

Contrary to the form of the Act of Congress in such case made and provided and against the peace and dignity of the United States of America.

FRANCIS FISHER KANE,
United States Attorney.

Philadelphia, December 6, 1917.

67 In the District Court of the United States for the Eastern District of Pennsylvania, Sept. Sessions, 1917.

No. 89.

UNITED STATES

vs.

PETER SCHAEFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

Sur Charge: Making False Reports, Obstructing the Recruiting, and Conspiracy.

Demurrer of Peter Schaefer.

(Filed Dec. 17, 1917.)

And now, to wit, this 17th day of December, 1917, the defendant, Peter Schaefer in his own person comes into court, and, having heard the said indictment as of the above term and number read, says that the said indictment and the matters therein are, as therein alleged and set forth, not sufficient in law to compel him to answer thereto and he therefore demurs to the said indictment for the following

Reasons.

1. Because the said indictment does not charge the defendant, Peter Schaefer with any indictable offense against the laws of the United States.

2. Because the acts alleged to have been done and committed by the defendant, Peter Schaefer, in the first count of said indictment are not such as constitute the making and conveying of false reports with the intent to promote the success of the enemies of the United States.

3. Because the acts alleged to have been done and committed by the defendant, Peter Schaefer, in the second count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

4. Because the acts alleged to have been done and committed by the defendant, Peter Schaefer, in the third count of said in-
68 dictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

5. Because the acts alleged to have been done and committed by the defendant, Peter Schaefer, in the fourth count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

6. Because the acts alleged to have been done and committed by the defendant, Peter Schaefer, in the fifth count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

7. Because the acts alleged to have been done and committed by the defendant, Peter Schaefer, in the sixth count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

8. Because the acts alleged to have been done and committed by the defendant, Peter Schaefer, in the seventh count of the indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

9. Because the acts alleged to have been done and committed by the defendant, Peter Schaefer, in the eighth count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

10. Because the acts alleged to have been done and committed by the defendant, Peter Schaefer, in the ninth count of said indict-
ment are not such as constitute a criminal conspiracy under
69 the laws of the United States.

WM. A. GRAY,
Atty. for Peter Schaefer.

ITY AND COUNTY OF PHILADELPHIA, *ss:*

William A. Gray, being duly sworn according to law. deposes and ays that this demurrer is not filed for the purpose of delay, but for ie good and sufficient reasons therein mentioned.

WM. A. GRAY.

Sworn to and subscribed before me this 17th day of December, . D. 1917.

[SEAL.] THOMAS E. COGAN,
Notary Public.

Commission Expires March 8th, 1919.

0 In the District Court of the United States for the Eastern District of Pennsylvania, Sept. Sessions, 1917.

No. 89.

UNITED STATES

vs.

ETER SCHAEFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

ur Charge: Making False Reports, Obstructing the Recruiting, and Conspiracy.

Demurrer of Paul Vogel.

(Filed Dec. 17, 1917.)

And now, to wit, this 17th day of December, 1917, the defendant, aul Vogel in his own person comes into court, and, having eard the said indictment as of the above term and number read, ays that the said indictment and the matters therein are, as therein lleged and set forth, not sufficient in law to compel him to answer hereto and he therefore demurs to the said indictment for the ollowing

Reasons.

1. Because the said indictment does not charge the defendant, aul Vogel, with any indictable offense against the laws of the nited States.

2. Because the acts alleged to have been done and committed by he defendant, Paul Vogel, in the first count of said indictment re not such as constitute the making and conveying of false reports ith the intent to promote the success of the enemies of the United tates.

3. Because the acts alleged to have been done and committed by he defendant, Paul Vogel, in the second count of said indict-

ment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

4. Because the acts alleged to have been done and committed by the defendant, Paul Vogel, in the third count of said in-
71 dictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

5. Because the acts alleged to have been done and committed by the defendant, Paul Vogel, in the fourth count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

6. Because the acts alleged to have been done and committed by the defendant, Paul Vogel, in the fifth count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

7. Because the acts alleged to have been done and committed by the defendant, Paul Vogel, in the sixth count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

8. Because the acts alleged to have been done and committed by the defendant, Paul Vogel, in the seventh count of sadi indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

9. Because the acts alleged to have been done and committed by the defendant, Paul Vogel, in the eighth count of said indictment are not such as constitute the offeuse of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

10. Because the acts alleged to have been done and committed by the defendant, Paul Vogel, in the ninth count of said indictment are not such as constitute a criminal conspiracy under
72 the laws of the United States.

WM. A. GRAY,
Atty. for Paul Vogel.

CITY AND COUNTY OF PHILADELPHIA, *ss:*

William A. Gray, being duly sworn according to law, deposes and says that this demurrer is not filed for the purpose of delay, but for the good and sufficient reasons therein mentioned.

WM. A. GRAY.

Sworn to and subscribed before me this 17th day of December, A. D. 1917.

[SEAL.] THOMAS E. COGAN,
Notary Public.

Commission Expires March 8th, 1919.

73 In the District Court of the United States for the Eastern District of Pennsylvania, Sept. Sessions, 1917.

No. 89.

UNITED STATES

vs.

PETER SCHAEFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

Sur Charge: Making False Reports, Obstructing the Recruiting, and Conspiracy.

Demurrer of Louis Werner.

(Filed Dec. 17, 1917.)

And now, to wit, this 17th day of December, 1917, the defendant, Louis Werner, in his own person comes into court, and, having heard the said indictment as of the above term and number read, says that the said indictment and the matters therein are, as therein alleged and set forth, not sufficient in law to compel him to answer thereto and he therefore demurs to the said indictment for the following

Reasons.

1. Because the said indictment does not charge the defendant, Louis Werner, with any indictable offense against the laws of the United States.

2. Because the acts alleged to have been done and committed by the defendant, Louis Werner, in the first count of said indictment are not such as constitute the making and conveying of false reports with the intent to promote the success of the enemies of the United States.

3. Because the acts alleged to have been done and committed by the defendant, Louis Werner, in the second count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

4. Because the acts alleged to have been done and committed by the defendant, Louis Werner, in the third count of said in-
74 dictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

5. Because the acts alleged to have been done and committed by the defendant, Louis Werner, in the fourth count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

6. Because the acts alleged to have been done and committed by the defendant, Louis Werner, in the fifth count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

7. Because the acts alleged to have been done and committed by the defendant, Louis Werner, in the sixth count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

8. Because the acts alleged to have been done and committed by the defendant, Louis Werner, in the seventh count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

9. Because the acts alleged to have been done and committed by the defendant, Louis Werner, in the eighth count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

10. Because the acts alleged to have been done and committed by the defendant, Louis Werner, in the ninth count of said indictment are not such as constitute a criminal conspiracy under
75 the laws of the United States.

LOUIS WERNER.

CITY AND COUNTY OF PHILADELPHIA, *ss:*

Louis Werner, being duly sworn according to law, deposes and says that this demurrer is not filed for the purpose of delay, but for the good and sufficient reasons therein mentioned.

LOUIS WERNER.

Sworn to and subscribed before me this 17th day of December, A. D. 1917.

[SEAL.] THOMAS E. COGAN,
Notary Public.

Commission Expires March 8th, 1919.

In the District Court of the United States for the Eastern District of Pennsylvania, Sept. Sessions, 1917.

No. 89.

UNITED STATES

vs.

ER SCHAEFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

Charge: Making False Reports, Obstructing the Recruiting, and Conspiracy.

Demurrer of Martin Darkow.

(Filed Dec. 17, 1917.)

nd now, to wit, this 17th day of December, 1917, the defendant, in Darkow, in his own person comes into court, and, having d the said indictment as of the above term and number read, that the said indictment and the matters therein are, as therein ged and set forth, not sufficient in law to compel him to answer eto and he therefore demurs to the said indictment for the wing

Reasons.

. Because the said indictment does not charge the defendant, tin Darkow, with any indictable offense against the laws of the ted States.

. Because the acts alleged to have been done and committed by defendant, Martin Darkow, in the first count of said indictment not such as constitute the making and conveying of false reports the intent to promote the success of the enemies of the United es.

. Because the acts alleged to have been done and committed by defendant, Martin Darkow, in the second count of said indictnt are not such as constitute the offense of knowingly, wilfully unlawfully obstructing the recruiting and enlistment service of United States.

. Because the acts alleged to have been done and committed by the defendant, Martin Darkow, in the third count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enment service of the United States.

. Because the acts alleged to have been done and committed by defendant, Martin Darkow, in the fourth count of said indictnt are not such as constitute the offense of knowingly, wilfully unlawfully obstructing the recruiting and enlistment service of United States.

6. Because the acts alleged to have been done and committed by the defendant, Martin Darkow, in the fifth count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

7. Because the acts alleged to have been done and committed by the defendant, Martin Darkow, in the sixth count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

8. Because the acts alleged to have been done and committed by the defendant, Martin Darkow, in the seventh count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

9. Because the acts alleged to have been done and committed by the defendant, Martin Darkow, in the eighth count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

10. Because the acts alleged to have been done and committed by the defendant, Martin Darkow, in the ninth count of said indictment are not such as constitute a criminal conspiracy under
78 the laws of the United States.

MARTIN DARKOW.

CITY AND COUNTY OF PHILADELPHIA, *ss:*

Martin Darkow, being duly sworn according to law, deposes and says that this demurrer is not filed for the purpose of delay, but for the good and sufficient reasons therein mentioned.

MARTIN DARKOW.

Sworn to and subscribed before me this 17th day of December, A. D. 1917.

[SEAL.] THOMAS E. COGAN,
Notary Public.

Commission Expires March 8th, 1919.

In the District Court of the United States for the Eastern District of Pennsylvania, Sept. Sessions, 1917.

No. 89.

UNITED STATES

vs.

ER SCHAEFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

Charge: Making False Reports, Obstructing the Recruiting, and Conspiracy.

Demurrer of Herman Lemke.

(Filed Dec. 17, 1917.)

And now, to wit, this 17th day of December, 1917, the defendant, rman Lemke, in his own person comes into court, and, having rd the said indictment as of the above term and number read, s that the said indictment and the matters therein are, as therein ged and set forth, not sufficient in law to compel him to answer reto and he therefore demurs to the said indictment for the owing

Reasons.

. Because the said indictment does not charge the defendant, rman Lemke, with any indictable offense against the laws of the ited States.

2. Because the acts alleged to have been done and committed by defendant, Herman Lemke, in the first count of said indictment not such as constitute the making and conveying of false reports h the intent to promote the success of the enemies of the United tes.

3. Because the acts alleged to have been done and committed by defendant, Herman Lemke, in the second count of said indictnt are not such as constitute the offense of knowingly, wilfully l unlawfully obstructing the recruiting and enlistment service of United States.

4. Because the acts alleged to have been done and committed by the defendant, Herman Lemke, in the third count of said indictment are not such as constitute the offense of knowingly, wilfully and unlawfully obstructing the recruiting and enlistment service of the United States.

5. Because the acts alleged to have been done and committed by defendant, Herman Lemke, in the fourth count of said indictnt are not such as constitute the offense of knowingly, wilfully l unlawfully obstructing the recruiting and enlistment service of United States.

6. Because the acts alleged to have been done and committed b
the defendant, Herman Lemke, in the fifth count of said indictmen
are not such as constitute the offense of knowingly, wilfully an
unlawfully obstructing the recruiting and enlistment service of th
United States.

7. Because the acts alleged to have been done and committed b
the defendant, Herman Lemke, in the sixth count of said indictmen
are not such as constitute the offense of knowingly, wilfully an
unlawfully obstructing the recruiting and enlistment service of th
United States.

8. Because the acts alleged to have been done and committed b
the defendant, Herman Lemke, in the seventh count of said indic
ment are not such as constitute the offense of knowingly, wilfull
and unlawfully obstructing the recruiting and enlistment servi
of the United States.

9. Because the acts alleged to have been done and committed b
the defendant, Herman Lemke, in the eighth count of said indic
ment are not such as constitute the offeuse of knowingly, wilfull
and unlawfully obstructing the recruiting and enlistment servi
of the United States.

10. Because the acts alleged to have been done and committed b
the defendant, Herman Lemke, in the ninth count of said indic
ment are not such as constitute a criminal conspiracy und
81 the laws of the United States.

HERMAN LEMKE.

CITY AND COUNTY OF PHILADELPHIA, *ss:*

Herman Lemke, being duly sworn according to law, deposes an
says that this demurrer is not filed for the purpose of delay, but f
the good and sufficient reasons therein mentioned.

HERMAN LEMKE.

Sworn to and subscribed before me this 17th day of Decembe
A. D. 1917.

[SEAL.] THOMAS E. COGAN,
Notary Public.

Commission Expires March 8th, 1919.

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2 In the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

UNITED STATES OF AMERICA

vs.

PETER SCHAEFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

Indictment.

Opinion Sur Demurrers to Indictment.

(Filed Jan. 23, 1918.)

DICKINSON, *J.*.

The demurrers are filed separately on behalf of each one of the defendants. The grounds of demurrer set forth apparently go only to a challenge of the criminal character of the acts charged, but the argument extended also to a criticism of the form of the indictment. We will refer to both features.

The present unhappy state of the Russian people and the bayonet thrust which has been made at the heart of Italy are commonly thought to be illustrations of the baneful results which may follow an enemy propaganda when permitted to undermine the defensive strength of a nation at war. This is the offence, the guilt of which is the charge laid at the door of these defendants in that they "did knowingly, wilfully and unlawfully make and convey false reports and statements, with intent to promote the success of the enemies of the United States," the particular enemy whose success was meant to be promoted being named. When we reflect upon the immeasurable calamity which the victory of such an enemy over us would be to all our people, a denial of the guilt of the commission of any act which would in the least degree promote it can be understood and would be expected. It is not easy to understand, however, how it could possibly be that such acts had not been made to constitute an offence against the law, if there was any law upon the subject.

The point made is that the acts charged here are not acts of the kind and character condemned by the law in that they "are not such as constitute the making and conveying of false reports
83 and statements with the intent to promote the success of the enemies of the United States," and are not such as to constitute the offence of "obstructing, recruiting and enlistment," and the like.

All which need *not* be said is that the Act of Congress of June 15th, 1917, brands as a crime reports and statements made with the intent indicated and as equally criminal obstructing, recruiting and

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the like, and this indictment charges these defendants with
commission of these acts. Whether what they did was in legal
tendment and effect what they are charged with doing is a t
question, not a question of pleadings.

We refuse to sustain the demurrers in this respect, basing
refusal on the familiar ground that the question raised can alw
be, at least as well, raised at the trial as by demurrer, and we th
is here one which can be properly ruled only at the trial.

The United States vs. Pierce, 245 Fed., 878, is a case which
sents the only thought which can properly be advanced in c
of this kind. Freedom of political discussion, either through
printed page or otherwise, is without doubt a right essential to
cause of democracy, and is one to which the American people
so devoted, that without a change in our Constitution, made w
their sanction and approval, such discussion cannot be made unl
ful, *not* this freedom outlined. Whenever this right is involv
it will be upheld by Courts and juries alike. This is a far cry, h
ever, from the judicial finding that the right *in* involved whene
it suits the purposes of a defendant to assert that it is involved.
is the whole act done which determines its character. This is so
times disclosed by the surface indications, but criminality is no
real because accompanied with subtle and cunning attempts to h
itself under the cloak of constitutional privileges.

The vice of duplicity in pleading ascribed to this indictment d
not appear to be present.

Ammerman vs. United States, 216 Fed. Rep., 326, presente
wholly different question. There one Act of Congress m
84 it a criminal offence to introduce liquor into a political te
torial division, defined as the Indian Territory, and prescri
a punishment for the offence; another Act of Congress made it
offence to introduce liquor into any Indian country, defining
meaning of that term as used in the Act, and prescribing a differ
penalty. Not only did the punishment to be imposed differ but
offences were created by different acts and were wholly sepa
and distinct offences, and the evidence by which guilt could be es
lished was different. The Court held that the two offences co
not be charged together in one count. It is clear that R. S. 1
justified the Court in sustaining the demurrer. The ruling has, h
ever, no application to the present case. R. S. 1025 supplies us w
an all sufficient guide to determine what indictments are good.

We find no defects in the present indictment which can prejud
the rights of the defendants. The only substantial thing they
claiming by these demurrers is that the Court shall say in adva
of the evidence being heard that the acts charged to be criminal
not criminal. The defendants by this are invoking no right wh
belongs to them.

The demurrers are overruled, and judgment is entered in acc
ance with R. S. 1026.

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85 In the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

UNITED STATES OF AMERICA

vs.

PETER SCHAEFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

Exception to Action of Court Overruling Demurrer.

(Filed Jan. 24, 1918.)

And now, to wit, this 24th day of January, 1918, the defendant, Peter Schaefer, by his attorney, William A. Gray, excepts to the action of the Court overruling the Demurrer filed in the above case.

WM. A. GRAY,
Attorney for Peter Schaefer, Defendant.

Exception allowed. Bill sealed.

DICKINSON, *Judge.*

86 In the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

UNITED STATES OF AMERICA

vs.

PETER SCHAEFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

Exception to Action of Court Overruling Demurrer.

(Filed Jan. 24, 1918.)

And now, to wit, this 24th day of January, 1918, the defendant, Paul Vogel, by his attorney, William A. Gray, excepts to the action of the Court overruling the Demurrer filed in the above case.

WM. A. GRAY,
Attorney for Paul Vogel, Defendant.

Exception allowed. Bill sealed.

DICKINSON, *Judge.*

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87 In the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

UNITED STATES OF AMERICA

vs.

PETER SCHAEFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

Exception to Action of Court Overruling Demurrer.

(Filed Jan. 24, 1918.)

And now, to wit, this 24th day of January, 1918, the defendant, Louis Werner, by his attorney, William A. Gray, excepts to the action of the Court overruling the Demurrer filed in the above case.

WM. A. GRAY,
Attorney for Louis Werner, Defendant.

Exception allowed. Bill sealed.

DICKINSON, *Judge.*

88 In the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

UNITED STATES OF AMERICA

vs.

PETER SCHAEFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

Exception to Action of Court Overruling Demurrer.

(Filed Jan. 24, 1918.)

And now, to wit, this 24th day of January, 1918, the defendant, Martin Darkow, by his attorney, William A. Gray, excepts to the action of the Court overruling the Demurrer filed in the above case.

WM. A. GRAY,
Attorney for Martin Darkow, Defendant.

Exception allowed. Bill sealed.

DICKINSON, *Judge.*

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In the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

UNITED STATES OF AMERICA

vs.

TER SCHAEFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

Exception to Action of Court Overruling Demurrer.

(Filed Jan. 24, 1918.)

And now, to wit, this 24th day of January, 1918, the defendant, rman Lemke, by his attorney, Wiliam A. Gray, excepts to the ion of the Court overruling the Demurrer filed in the above case.

WM. A. GRAY,
Attorney for Herman Lemke, Defendant.

Exception allowed. Bill sealed.

DICKINSON, *Judge.*

In the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

THE UNITED STATES

vs.

UIS WERNER, MARTIN DARKOW, PETER SCHAEFER, PAUL VOGEL, and HERMAN LEMKE.

Bill of Exceptions.

Be it remembered, that upon the arraignment of the defendants the December Sessions, 1917, of the United States District Court the Eastern District of Pennsylvania, to wit, on the seventeenth y of December, 1917, and before pleading or taking other steps this case, the defendants and each of them, by their counsel, filed murrers to the bill of indictment in this case, which said de-urrers were, on the twenty-third day of January, 1918, overruled, which ruling and decision of the Court in overruling the de-urrers, the defendants, by their counsel, then and there excepted. Be it further remembered, that at the September Term, 1918, of e said United States District Court for the Eastern District of nnsylvania, the defendants having been arraigned and pleaded

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not guilty to the bill of indictment, to which said plea the Government of the United States joined issue, this case came on for trial before the Honorable Oliver B. Dickinson and a jury fully empanelled to try the said issue, on the 23rd, 24th, 25th, 26th and 27th day- of September, 1918, and upon the trial the Government of the United States, by the District Attorney for the Eastern District of Pennsylvania, and the defendants, by their counsel, presented the evidence on behalf of the Government of the United States and the said defendants, hereinafter following, and thereafter the Court charged as next thereafter appears and answered points for
91 charge submitted by the defendants as next thereafter set out, and exceptions were taken to the rulings of the Court upon the admission *of* rejection of testimony, and exceptions were taken to the charge of the Court and to the answers to points submitted for charge, all of which appear in the stenographer's notes of testimony taken upon the trial of said case, as follows:

92 In the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

THE UNITED STATES OF AMERICA

vs.

PETER SCHAFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

Indictment: Making and Conveying False Reports to Promote Success of Enemy, etc.; Wilfully Obstructing Recruiting and Enlistment Service; Conspiracy to Make False Reports, etc.

Before Hon. Oliver B. Dickinson, J.

Philadelphia, Pa.,

Monday, September 23, 1918—10 a. m.

Present:

Ernest Harvey, Esq., Assistant United States District Attorney; Samuel Rosenbaum, Special Assistant United States District Attorney, and Owen J. Roberts, Esq., Special Assistant United States District Attorney, Representing the United States.

William A. Gray, Esq., and Henry John Nelson, Esq., Representing the Defendants.

The defendants, Peter Schafer, Paul Vogel, Louis Werner, Martin Darkow and Herman Lemke, upon being arraigned to the
93 indictment charging them with making and conveying false reports to promote success of enemy, etc.; wilfully obstructing recruiting and enlistment service; and conspiracy to make false reports, etc., plead "Not Guilty."

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Mr. Gray: If your Honor pleases, the defendants, having been signed, and I understand now brought to the bar of the court trial, I desire to ask your Honor to grant to the defendants and each of them a severance of the trial. I will be very glad, should r Honor desire me to do so, to state my reasons therefor. It is matter, however, I know, that is, to a great extent, within your nor's discretion, and you are familiar with the facts——

The Court: Let us know first whether the motion is opposed or

Mr. Roberts: It is, yes, sir.

The Court: Then, I think the burden is on you, Mr. Gray.

Mr. Gray: If your Honor pleases, though I differ with the rul- s of the courts upon the question of the right of defendants, re tried jointly, as to their challenge of the jurors, in differing, position is this: That each defendant is entitled to the number hallenges that would be allowed to him if he was tried separately individually. The courts have, and your Honor has, ruled to contrary, that all challenges must be joint.

The Court: The statute expressly so provides.

Mr. Gray: I understand that. I know that, sir. But my thought is that the statute is in derogation of the individual's hts, guaranteed to him by the constitution. That is one of the unds, therefore, on which I base my application for a severance. re are defendants who might differ as to men whom they would ept on the jury or would prefer to challenge, and, therefore, they placed in a most embarrassing situation, of probably having a yman, who is acceptable to one, taken away from him, because we re to exercise a challenge on the part of the other, or the inability gree as to whether a man should be challenged or not.

Therefore, I feel that it is a strong reason, that should appeal to r Honor, that these men ought not to be compelled, the five of m to go to trial with a certain number of challenges among all , under those circumstances, when they would, if they were being d individually, be entitled to a greater number of challenges.

Now, there are other reasons. The position of each of these de- dants, of course, from his standpoint, is such that his defense to charges in this bill of indictment will be different. I do not eve I step beyond the bounds when I say to your Honor that the nection of one of these men with the newspaper here made the is of this indictment is in one capacity, and another man is con- ted in an entirely different capacity, we will say having absolutely nothing to do with the publication of the paper itself, and so the defenses of these men are different. They are separate. They are individual defenses, and to compel them to go to l together puts them in the position, if your Honor pleases, that re is some evidence that would be chargeable as against one the defendants. It is bound to go in the evidence and weigh inst the other defendant, though he may have had no connection h it whatsoever, and whether your Honor instructs the jury that y must not consider this evidence as against that defendant or , when it gets into the mind, human nature cannot dismiss it or

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discard it, when it comes to a consideration of the questions th
are involved.

Those are the practical reasons in connection with the applicati

Mr. Roberts: If your Honor pleases, I have only one word in rep
The practice, as I understand it, is absolutely settled, under t
statute, and, granting, if your Honor pleases, what Mr. Gray s
to be true, in the case of defendants brought into court on any c
spiracy charge, for example, each man may be charged with
conspiracy. If one of them was not a party to the transaction, th
can certainly be no inconvenience, no difficulty, about a man est
lishing that he did not have anything to do with it, if it be a fact.

Mr. Gray: In a conspiracy case, of course, the difference is this
I recognize that one of the counts here is for conspiracy. I presu
that we are going to try the indictment, or the District Attorney
going to try all of the counts at the same time. He has m
96 no election. In a conspiracy case, the act of one defend
might be evidence as against the other, notwithstanding
fact that there was no connection between them, if it was an act t
was in the course of the conspiracy, after the establishment of
main offence.

The Court: I appreciate the weight of the considerations up
which the application is based, but the practice of the courts of
United States is too well established to justify our departing from
The question of the right of challenge has been determined by
Act of Congress, and we must accept it as it is. Therefore, I
overrule the motion for a severance, and give the defendants a
each of them an exception.

Mr. Gray: So that we can avoid the necessity of numerous separ
applications for exceptions, may it be understood, if your Ho
pleases, that not only in this instance, but in any instance, when
exception is asked for to any of your Honor's rulings, it is granted
each of the defendants separately as well as granted to all of th
jointly, if that may be necessary?

The Court: The stenographer's notes may show that it is und
stood, unless otherwise stated, that at the time the ruling is ma
that any exception granted enures to the benefit of each and ev
defendant.

Mr. Roberts: And to them jointly.

The Court: And to them jointly.

Mr. Gray: Individually and jointly.

97 The Court: The exception will enure to them individua
and jointly. That will cover it.

(Exception noted to the defendants, individually and jointly,
the overruling by the Court of the motion for a severance, by di
tion of the court.)

Selection of the Jury.

No. 87, LEVI S. THOMAS, affirmed on his voir dire.

Mr. Roberts: I am not familiar with the practice of the exami
tion of a juryman on his voir dire. Is it the practice that

Government examines first, and turns over the witness to the defendant?

Mr. Gray: We may agree that is the way it is to be done.

Mr. Roberts: Yes. We may agree that is the way it is to be done.

The Court: I think that is the most convenient way.

Mr. Roberts: Then, shall we exercise our right of challenge at the time we finish our examination?

The Court: Counsel usually have been in accord with the proposition to stand them aside.

Mr. Roberts: I have always followed the practice of making the challenge then and there, or waiving the challenge. If it is an advantage to Mr. Gray to do it the other way, I will not insist on it at all, but will have the jurors examined, then exercise
98 our challenge afterward. It is a little troublesome to keep in mind the examination of them when you get twenty or thirty.

Mr. Gray: In the United States Courts I know we have followed the practice of standing the jurors aside. I am perfectly willing, and will not raise any question as to the manner in which it is done, either to follow the procedure which is adopted in the State Courts, namely, that when a juror has been examined on his voir dire, the Government first exercises its right of challenge as to one man, and then the defendants exercise their right, and their failure to exercise it results in the acceptance of that juror, the second juror the defendants stating first, and so on, alternately. The only reason I believe that that would be an advantage is because I propose to raise upon the calling of the jury the question that I intimated to your Honor that I did not feel satisfied with, and that is the right to exercise more than the number of challenges that would be allowed to defendants, as joint defendants. Now, I can raise it in that way, by exercising the challenge on behalf of each or a certain individual defendant, or, if your Honor desires or would rather adhere to the practice of having them stand aside, I can, I think, put the record in such shape that it will give me an opportunity to raise the question any how.

Mr. Roberts: I would much prefer to follow the practice of challenging after the juror has been examined.

The Court: The State practice, as I recall it, originally was that the defendant was bound to exercise his right of chal-
99 lenge, but the Commonwealth might stand the juror aside.

Mr. Roberts: Yes. That right was taken away later.

The Court: That right was taken away by statute. The prevalent practice in the United States Court is to postpone the challenges, but counsel may adopt either method that suits their convenience.

Mr. Roberts: If Mr. Gray will adopt the method of exercising the right after the juror has been examined, waiving if we have no challenge, I would much prefer to have that method used.

Mr. Gray: I will agree to that.

Mr. Roberts: We will follow that method.

By Mr. Roberts:

Q. Mr. Thomas, this is a prosecution against Messrs. Schafer, Vogel, Werner, Darkow and Lemke, who are alleged to have been connected with a paper called the Philadelphia Tageblatt or the Philadelphia Sonntagsblatt, the Sunday edition. Are you at all familiar with the question?

A. Only from the newspapers.

Q. Have you formed any opinion whatever about the guilt or innocence of the defendants?

A. I have not.

Q. Would the fact that they are editors, or connected in any way with a German newspaper, prejudice you against them in the trial of the case?

A. No.

100 Q. You feel confident, having formed no opinion, to give them an entirely fair and impartial trial, judging them by the evidence, and that alone?

A. Yes, sir.

Mr. Roberts: The Government has no challenge.

Cross-examined.

By Mr. Gray:

Q. Mr. Thomas, how old are you, please?

A. 75.

Q. And where do you reside?

A. Malvern, Chester County.

Q. You have lived in Malvern how long?

A. Since 1875.

Q. As the District Attorney has stated to you, this prosecution by the Government grows out of articles that are alleged to have been published in a newspaper in the City of Philadelphia that is published in the German language, it being claimed by the Government that these articles were articles that were in violation of what is known as the Espionage Act. Do you feel that you could serve as a juror in a case of that character and render a verdict strictly in accordance with the evidence?

A. I think so.

Q. Disregarding any other feelings that you might have or not have in the matter?

A. Yes.

Q. Would the fact that any of these defendants were either

101 Germans or of German descent affect your judgment at all?

A. Not at all.

Q. In other words, you would feel that, no matter who they were, they were entitled to be given a fair trial under the laws of this country, and to have their guilt or innocence determined just the same as any American citizen born here would have?

A. Yes.

Are you familiar with any of the facts of the case? Have you nything about it?
Only such as I have read in the newspapers.
Lately?
I have not followed it up.
Lately, or some time ago?
Well, I should say during the past year.
During the past year?
Yes, sir.
From what you read, did you form or express any opinion as guilt or innocence of any of the defendants?
No.
And have you discussed the matter with anybody, I mean in dinarily friendly way?
I have not.
Would the fact, if it be so, that any of the articles that the dants are alleged to have printed criticized the Government, in any way your determination to weigh the evidence care- and render a fair and proper verdict?

Mr. Roberts: That question, I think, is objectionable. I do not think a juror ought to be asked that question. A ism of the Government may be a violation of this Act, if your or please. I do not think a juror ought to be asked whether, ere was a violation of the Act, it would affect his judgment st the defendant.

he Court: I did not understand that was the purport of the ion.

r. Gray: The question was meant to convey this thought——

he Court: I understand the thought you meant to convey. Does District Attorney desire to have the question re-read?

r. Gray: I have no objection to having the question re-read. I k, as it stands, it conveys the thought I intend to convey.

he Court: It conveyed to me the thought that I assumed it was nded to convey, but suppose you have it re-read.

Question repeated.)

he Court: There is just that ambiguity about it, Mr. Gray, be- e the comments that you have phrased as "criticisms" might nselves be a violation of the Act.

r. Gray: I think not. There is nothing in the Act that pre- s any criticism of the Government.

he Court: I know, but I think the ambiguity is in the use of the word "criticism," whether a criticism, not in itself a violation of the Act, would affect him. The mere fact that there had been criticisms, which I understand is the thought in your d——

Ir. Gray: I will have to ask your Honor to rule on that as it is. not see how I can change it.

The Court: I will permit the question with the explanation that word "criticism" does not mean words that in themselves would

be unlawful. It is the mere fact that they have criticised the Government within their rights of criticism.

The Witness: Please read the question.

(Question read as follows:)

"Q. Would the fact, if it be so, that any of the articles that the defendants are alleged to have printed, criticised the Government affect in any way your determination to weigh the evidence carefully and render a fair and proper verdict.")

The Witness: It would not.

By Mr. Gray:

Q. Would the fact, if it be so, that any of the newspaper articles tended toward pacifism influence your verdict?

A. Not at all.

Mr. Roberts: I have no challenge.

Mr. Gray: I have no challenge.

(There being no challenge, the juror was seated in the box as Juror No. 1.)

104 No. 55, JAMES A. LYNAUGH, sworn on his voir dire.

By Mr. Roberts:

Q. You have heard most of what has been asked your predecessor in the box?

A. I have.

Q. At least, you have heard what this case is about and who the defendants are?

A. Yes.

Q. Have you read about the case?

A. No, sir.

Q. You have formed, then, no opinion at all of the guilt or innocence of these defendants?

A. None.

Q. You feel yourself entirely competent to give them a fair trial on the charge of violating the Espionage Law which forbids making false reports with intent to interfere with the operation of the Military and Naval forces of the United States, and to give advantage to the enemies of the Government, or to obstruct the recruiting and enlistment service—you think you could give them a fair trial on such a charge?

A. I can.

Cross-examined.

By Mr. Gray:

Q. Have you any knowledge of the case from any other source outside of reading it or having discussed it or heard it discussed by anybody?

A. I have not read the discussions of it.
Q. You have not heard it discussed?
A. I have not read the discussions of it.
. How old are you?
. 45 past.
. You reside where?
. Pottsville.
. What is your business?
. Road Foreman, City of Pottsville.
. Road Foreman of what?
. Of the City of Pottsville. I have charge of the streets.
. You have lived in Pottsville how long? All your life?
. 45 years.
. You are a married man?
. Very much.
. Children?
. Six.
. Some in the service?
. No.
. Would the fact that these men, or any of them, are either Ger-
ns or of German descent affect your judgment in the matter of the
i?
. Not any.
. It would not influence you?
. No.
. In other words, you feel you would give them a trial in ac-
cordance with the legal evidence and the law irrespective of
who they might be?
A. Sure.

Mr. Gray: No challenge.
Mr. Roberts: Challenged by the Government.

No. 58, HOWARD L. MCILVAIN, sworn on his voir dire.

By Mr. Roberts:

Q. You have heard the questions that were put to your pred-
essors?
A. Part of them.
Q. In the examination of the jurors?
A. Part of them.
Q. Have you read anything of this case?
A. I have.
Q. Have you formed an opinion?
A. A most decided one.
Q. Do you mean to say that you have formed such an opinion that
ou could not on your oath as a juror feel competent to give these
nen a fair trial on the evidence?
A. I mean to say that I will do the best I can, but there may be a
ub-conscious influence that would work there. I would like to say

that I am a member of the Loyal Legion, I have got a son in the service, and I am of Irish descent. I will do my best.

Q. Let me ask you this. You know when you go into the jury box you take an oath to try this case on the evidence, and that
107 only?

A. I do, sir.

Q. After you have taken that oath as an American citizen, and a member of this jury, if you do take that oath, you think it will be impossible to lay aside those prejudices, and to give these men, if they be Germans, the same fair trial as you would expect your son to have if he were charged with the same offense?

A. I would not say it would be impossible, no, sir.

Q. Do you think it is possible.

By the Court:

Q. Would it be impossible to do it?

A. There might be a sub-conscious influence — work there. Everybody is more or less influenced. I will do my best. I will take an oath and do my best. Better than that nobody can do.

(No cross examination.)

Mr. Roberts: No challenge by the Government.

Mr. Gray: If your Honor pleases, I will challenge *pre*-emptorily this juror on behalf of the defendant Louis Werner, and I desire to state that, as far as the other defendants are concerned, he is acceptable as a juror. Will your Honor permit me to so exercise the challenge?

The Court: I will rule that any challenge exercised by the defendants is exercised by them jointly, and if the juror is challenged, it is a challenge which counts in the number of peremptory chal-
108 lenges to which the defendants are limited by the Act of Congress.

Mr. Gray: I would ask an exception to your Honor's ruling.

(Exception noted for the defendants, individually and jointly, by direction of the court.)

The Court: Then, the peremptory challenge operates. The juror is excused.

No. 12, GEORGE W. COOK, sworn on his voir dire.

By Mr. Roberts:

Q. Mr. Cook, you have heard what this case is about from the other questions that were asked of your predecessors in that chair?

A. I tried to.

Q. It is a prosecution against these five defendants for having published articles with intent to promote the success of the enemy of this country, the Imperial German Government, and to obstruct the recruiting and enlistment service of the United States. Have you heard anything of that case?

A. In the newspapers.

Q. In the newspapers?
A. Yes.
Q. You have read it?
A. Yes. I have read about it, but not the particular case. I cannot say whether it was this one, or any other case.
Q. Have you formed any opinion as to the guilt or innocence of any of these defendants upon this charge that is about to be tried now?
A. I have not.
Q. You have not?
A. No, sir.
Q. Your mind is, then, to *be* best of your belief, in a state where you could give these gentlemen an absolutely fair and impartial trial on the evidence that is produced before you as a juror, and on nothing else?
A. I can.
Q. Would the fact that they are of German extraction or born in Germany prejudice you against them?
A. It will not.
Q. And would it prejudice you in their favor if the evidence showed they were guilty?
A. It would not.

Cross-examined.

By Mr. Gray:

Q. How old are you?
A. Past seventy-two.
Q. You do not remember discussing this case with anybody at all or anybody discussing it in your presence?
A. I cannot call it to mind.
Q. This newspaper that is spoken of by the District Attorney was called the Tageblatt published in Philadelphia in the German language. You do not know anything about that case?
A. I did not, only in the morning papers or in the English papers. I cannot read German.
Q. What morning English paper do you read?
A. Inquirer.
Q. And when you read anything about the case, or what the charges were against these defendants, did you then in your own mind form an opinion as to whether they were guilty or whether they were innocent?
A. I did not.
Q. There is no feeling that you had in the matter one way or the other?
A. No, none whatever.
Q. You just read it as an ordinary piece of news?
A. That is all.
Q. You are a married man?
A. I am.
Q. Of course, as the District Attorney has said to you—I am sim-

ply repeating his question—the fact that any of these men wer either Germans or of German descent would not affect your judgmen against them?

A. No.

Q. You would realize that these men were entitled, no matter wh they were, to a proper and impartial trial in a Court of Justice whe they were charged with an offense?

A. As long as they were citizens of this Country I would.

Q. Suppose any of them were not citizens, then would that affe your judgment?

111 A. Well, I don't think it would. It might, because I don think foreigners have a right to dictate what this Governme should do.

Q. No, but suppose a man was a foreigner, however—I am ju supposing that—and he was brought into court here charged wi the commission of a crime, you would realize, would you not, th our laws guarantee to him, even though he is a foreigner, a fair an impartial trial, and that he should not be convicted simply becau he is a foreigner,—he must only be convicted if he had done an thing?

A. I certainly would. I would not convict a man because he w a foreigner.

Q. So that you would not be prejudiced in that way?

A. I would not.

Q. You speak of a foreigner. You say that he should not dicta to us, as to what we should do, which, of course, we all agree with y in, but if it appeared in the evidence in this case that any of the men in the articles published or alleged to be published in the new papers, had criticised the United States Government, would that affe your judgment, if the criticism was not a violation of the law? other words, I mean this: That they are charged with the comm sion of an offense, publishing articles which they should not publis But suppose these articles do not come within the class of articl that are prohibited, but that they are criticisms of the actions of t United States; would that prevent you from giving them

112 fair trial on the charges that are made?

A. I don't think it would, but still, at the same time, think it is out of all reason for a man of that kind to criticise espe ially under the circumstances in which it is, when the Country is war. In time of peace I would look at it and pass it by, but in tim of war I do not know what I would do.

Q. What is your business?

A. At the present time?

Q. Yes.

A. I keep a cigar store at 59th Street above Market.

Mr. Gray: The juror is challenged on behalf of the defenda Martin Darkow. He is acceptable to the other defendants. Th challenge is a peremptory challenge.

The Court: To shorten this; do you want to raise this questio over every challenge?

Mr. Gray: I feel, if your Honor pleases, I cannot raise the question now. I can only raise the question at a time when, if your Honor takes the view you expressed a little while ago, my challenges are exhausted, and then I ask to exercise it as to some one else. That is the only time I can raise the question, but in order to raise it then, I am putting the matter as I do now.

The Court: That is the reason I asked you. If it is to be repeated merely four times, the stenographer can take it down. That will be the limit anyhow.

Mr. Roberts: Ten is the limit, I think, in this case. This
13 is a felony. I understand he has ten and the Government has six.

Mr. Gray: Ten and six.

Mr. Roberts: That is what I thought it was.

The Court: You may verify that if you have any doubts of your own recollection.

Mr. Roberts: I will.

The Court: Mr. Gray, what I had in mind was whether it will be satisfactory now to make a general ruling, that you indicate on behalf of which of the defendants the challenge is exercised, and that the same ruling is made as before, without encumbering the notes with a repetition of the ruling.

Mr. Gray: That is sufficient.

The Court: The stenographer may make that entry. You are excused, then, Mr. Juror.

(Exception noted for the defendants, jointly and individually, by direction of the court.)

No. 5, ELMER BILLINGFELT, sworn on his voir dire:

By Mr. Roberts:

Q. You have heard what has been asked the prior jurors who have been called to the chair?

A. Yes.

Q. Do you know anything about this prosecution from reading or discussion?

A. Not to any extent.

Q. I judge, then, you have formed no opinion at all about
14 the guilt or innocence of these five defendants who might come before you for trial?

A. No, sir.

Q. Would the fact that they are either of German extraction or still Germans, alien enemies, any of them, prevent you as a juror giving them on your oath a fair trial upon the charges, and the evidence only?

A. Not at all.

Q. In other words, you could lay aside any prejudice you might have by reason of the fact that you are an American citizen, and give a citizen of Germany, if he is brought before you here, charged

with an offense under a statute of the United States, a fair trial o the evidence, and nothing else, can you?

A. I can.

Q. And if you are sworn as a juror in this case, you will do s to the best of your ability?

A. I will.

Cross-examined.

By Mr. Gray:

Q. How old are you?

A. 57.

Q. Are you married?

A. No, sir.

Q. Where do you reside?

A. Lancaster County.

Q. What is your business?

A. Notary.

115 Q. Notary?

A. Yes, sir.

Q. You feel there is no question in your mind but what you coul give these men a fair trial, no matter who they were?

A. I would.

Q. In other words, you would realize, of course, that a court is place where we determine cases in accordance with the evidence a the law, and that when a man is here subject to trial, he is to b tried in just the same manner, whether he be German, Englis Irish or American? That is the kind of a trial you would give hi

A. Yes, sir.

Q. And you would find him guilty only if the evidence and t law, as the court gives you the law, warranted it?

A. I would.

Mr. Roberts: No challenge by the Government.

Mr. Gray: No challenge by the defendant.

(There being no challenge, the juror was seated in the box Juror No. 2.)

No. 77, CHARLES R. SHEELER, sworn on his voir dire:

By Mr. Roberts:

Q. You have heard what this case is about from the questions have previously asked?

A. Yes, sir.

Q. Have you formed any opinion about the case from reading or from discussions with anybody?

116 A. I have not.

Q. Nobody has discussed this particular trial with you

A. They have not.

Q. You are prepared, are you, if you are sworn in this case as

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ember of this jury, to give the defendants a trial according to the vidence and the law, and that only?
A. I am.
Q. Without any passion or prejudice?
A. I am.

Cross-examined.

By Mr. Gray:

Q. Have you read anything about the matter or discussed it with nybody?
A. Only so far as the headings are concerned. I have not dis-ussed it with anybody.
Q. Then, you have not formed any opinion as to the guilt or nnocence of the defendants?
A. None whatever, no, sir.
Q. And would the fact that either of them or any of them were ither Germans or of German descent influence your verdict?
A. It would not.
Q. You feel you could give them a fair and impartial trial and ender your verdict strictly in accordance with the evidence?
A. I do.

Mr. Gray: I have no challenge.
Mr. Roberts: The Government has no challenge.

(There being no challenge, the juror was seated in the
117 box as juror No. 3.)

No. 26, SAMUEL L. FRY, sworn on his voir dire:

By Mr. Roberts:

Q. Have you heard or read anything about this prosecution gainst these five defendants for a violation of the so-called Espion-age Act?
A. No, sir, I have not.
Q. You have not heard of it at all?
A. No sir.
Q. Then, it goes without saying, that you have formed no opinions about their individual guilt or innocence, have you?
A. No, sir.
Q. They are charged with publishing articles which contain false statements, with intent to hinder the operation of the Military and Naval forces of the United States, that would give aid to our enemy, and also articles which tend to obstruct the recruiting and enlistment service. I think perhaps one or more of them are German citizens. Not citizens of this country. Would that fact influence you against them?
A. No, sir.
Q. Would it influence you in their favor?
A. No.

LOSE IN CENTER

Q. I mean to say, would it influence you either for or against them?

A. Neither way, no, sir.

118 Q. In other words, you would treat a man who was a German exactly as if he was an American citizen so far as the evidence to convict him in the case was concerned, would you?

A. Yes, sir.

Cross-examined.

By Mr. Gray:

Q. Do you know of any reason at all, Mr. Fry, why you could not give them a fair and impartial trial?

A. No, sir.

Q. You realize, of course, as I suppose the other jurors do, that a jury takes the evidence, after it is given, upon the witness stand, and then listens to the instructions of the Court as to the law which is to be applied to the evidence, and then considers the matter upon the law and the evidence alone, without allowing anything outside to enter into their discussion, and determine the case accordingly. That is the way you would do it?

A. Yes, sir.

Q. Are you a married man?

A. Yes, sir.

Q. You live where?

A. Lancaster County.

Q. What business are you engaged in?

A. Furniture.

Q. Retail?

A. Yes, sir.

Q. You have at no time formed or expressed any opinion

119 as to the guilt or innocence of these men?

A. No, sir. This is the first I knew of the case when I came here this morning.

Mr. Roberts: The Government does not challenge Mr. Fry.

Mr. Gray: No challenge by the defendant.

(There being no challenge, the juror was seated in the box as Juror No. 4.)

No. 30, FRANKLIN D. GRIMES, sworn on his voir dire:

By Mr. Roberts:

Q. What is your business?

A. School Teacher.

Q. Have you read or discussed this case with anybody?

A. No, sir.

Q. Then, I take it you have formed no opinion about the guilt or innocence of any of these men?

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A. I did not know anything of the case before.
Q. They are charged with a violation of the Espionage Law, which bids the making of false statements, or doing anything that would struct the recruiting and enlistment service, that would be of aid d comfort to the enemy, the German Government, through the blication of articles in the newspaper. One or more of them, I not know, but I think at least one is not an American citizen. He is of German citizenship. Could you give these men a fair trial, and give the Government what it is entitled to, that is, a conviction, if the evidence proves they are guilty, give these men an acquittal if the evidence does not show they are ilty?
A. Yes, sir.
Q. And the fact that they are Germans, or that they were con-cted with a German newspaper, would not affect your judgment, d influence your verdict, on the evidence. Is that right?
A. Yes, sir.

Cross-examined.

By Mr. Gray:

Q. You know of no reason at all, Mr. Grimes, why you could not rve as a juror in this case and render a proper verdict according the law and the evidence?
A. No, sir, I do not.
Q. You would not allow any outside matters to influence you?
A. No, sir.
Q. No National prejudice, or prejudice of any other kind?
A. No, sir.
Q. You realize that any man when he comes into a court of law entitled to a fair and impartial trial?
A. I do.

Mr. Gray: I have no challenge.
Mr. Roberts: The Government has no challenge.
(There being no challenge, the juror was seated in the box as uror No. 5.)

No. 67, WILMER T. NIELDS, sworn on his voir dire:

By Mr. Roberts:

Q. What is your business?
A. I am retired. I have no business.
Q. Have you read or heard about this prosecution of these editors f this German paper?
A. I have not.
Q. You have not?
A. No, sir.
Q. Then, it goes without saying that you have formed no opinion bout their guilt or innocence in this case?

OSE IN CENTER

A. No, sir.

Q. You have heard these questions that have been asked abo your ability to lay aside any prejudice that you might have again the German Nation or German citizens?

A. Yes.

Q. Could you do that and give these men a fair trial?

A. No, I could not.

Q. You could not?

A. No, sir.

Q. Do you mean to say that if you were put on your oath here give these men a trial according to the law and the evidence, a that only, that you could not do it?

A. I would not want to trust myself.

Mr. Roberts: I shall not press him any further. The Governme will challenge for cause. I would not like to press a man w
122 says what Mr. Nields says to sit on a jury. The Governme challenges for cause.

Mr. Gray: My friend is very fair in the matter.

123 No. 14, JUSTICE J. COX, sworn on his voir dire.

By Mr. Roberts:

Q. You have heard the questions that have been put to yo predecessors in the chair?

A. Yes, as near as I could hear.

Q. Have you formed any opinion about the guilt or innocence these men?

A. I have not.

Q. Have you read about the case?

A. No sir.

Q. Have you discussed it with anybody?

A. No. We have been talking about it up at the Union Leag a little, because they knew I was on the jury. That is about a

Q. Whatever discussion there was made no impression on yo individual mind?

A. No sir.

Q. Could you give these men a fair trial if you were sworn as juror?

A. I could.

Q. Would the fact that one of them might be an alien enem make any difference to you as to his guilt or innocence of a cri against the United States?

A. No sir.

Cross-examined.

By Mr. Gray:

Q. You understand—you probably know what the espionage a is? I guess, do you not, or something about it?

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124 A. Something, yes sir.

Q. So that the indictment in this case under that espionage act charges the defendants with making false reports. That in this case means the writing of articles, or the publishing of articles conveying false information. Then, they are also charged with writing articles and publishing articles that were an interference, or interfered with the recruiting, and then they are charged in a general way with conspiracy to do those things. Now, would the fact that the publications of the articles, that the government charges violated the law, were in the German language, and in a German newspaper, and published by people who were either Germans or of German descent, prevent you from weighing the matter carefully, properly, and in accordance with the instructions as to the law that the Court gives you, and giving them a fair and impartial verdict?

A. It would not.

Q. It would not?

A. No sir.

Q. You see, of course, plainly, the situation as far as we have it here, and you see it is our desire to have jurors that will determine the matter strictly on the evidence and the law, and to not allow anything—it is perfectly natural, but still not to allow any prejudices from the outside, by reason of nationalism or anything else, to interfere with the performance of your duties as a sworn

125 juror?

A. It would not with me.

Mr. Roberts: The government has no challenge.

Mr. Gray: I have no challenge.

(There being no challenge, the juror was seated in the box as juror number six.)

No. 35, PHILIP W. HESS, sworn on his voir dire.

By Mr. Roberts:

Q. You have heard the other questions that were asked the other jurors who are sitting there?

A. Yes.

Q. Have you heard or read anything about this case?

A. No, I have not.

Q. Then, you have formed no opinion about the guilt or innocence of these men?

A. No sir.

Q. You feel that you could give them a fair trial even if they published articles in a German newspaper and even if some of them were German citizens, never naturalized?

A. I should think I ought. That is what I mean. I ought to.

Q. You mean you could give them a fair trial?

A. Yes sir.

Q. You would not have any prejudice in your mind whatever, because they were Germans, would you?

LOSE IN CENTER

A. No sir.

Q. You would not have anything against them because
126 they were Germans, would you?

A. No sir.

Q. You would try this case according to the evidence, and that only?

A. Yes.

Cross-examined.

By Mr. Gray:

Q. How old are you?
A. Past fifty-six.
Q. You live where?
A. Up near Portland.
Q. Mount Bethel?
A. Yes.
Q. You have lived there how long?
A. I have lived there how long?
Q. Yes. How long have you lived there?
A. I moved there in 1906.
Q. Where did you live before that?
A. On a farm about a mile and half on this side.
Q. You have always lived up in that neighborhood?
A. Yes sir, always lived there. I was born there and raised there.
Q. That is what I mean?
A. Yes sir.
Q. You are married, of course?

A. Yes sir.

Q. You know nothing about the facts of this case? You
127 had not heard anything about it?

A. No, I have not, no sir.

Q. You feel, if you were accepted as a juror, that there is no prejudice or any feeling of any kind that would interfere with your rendering a proper verdict?

A. No sir.

Q. Would the fact that any of these men were of German descent prejudice you against them?

A. No sir.

Mr. Gray: I challenge this juror on behalf of the defendant Peter Schaeffer. He is acceptable to the other defendants.

(Same ruling as heretofore made.)
(Exception noted for the defendants, individually and jointly, by direction of the Court.)

No. 99, JOHN W. ZEIGLER, sworn on his voir dire.

By Mr. Roberts:

Q. What is your business?
A. Publisher. Book publisher.

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). You are not a newspaper publisher?
.. No sir.
). Have you read anything about this Tageblatt matter?
.. Only the newspaper headings.
Q. Have you formed any judgment about the guilt or innocence — these defendants?
A. I have not.
). Has anybody talked to you about the case?
.. I have heard no conversation about it at the time.
). Would you be prejudiced or biased either in favor of or against erman citizen or a man of German extraction, if you sat in the to try him for an alleged offense?
.. I would not allow myself to be prejudiced.
). You would not allow yourself to be?
.. No.
). You feel that, in spite of the fact that you are an American cit-, and these men may be Germans, that you could give them a and impartial trial on the law and on the evidence and that e, if you were sworn as a juror in this case?
.. I would feel bound by my oath to do so.

Cross-examined.

By Mr. Gray:

). You said with perfect propriety in answer to Mr. Robert's ques- that you would not allow yourself to do so when he asked you ther or not you would be influenced by anything outside, but ld you have to force yourself to put it aside, or would you start n an open mind?
.. I would start with a perfectly open mind.
). And I understand, of course, that what you would do, you ld do on the evidence and the instructions from the Court as to the law, and then you would discuss the matter as to whether or not you believed the defendants were guilty or not guilty?
A. Exactly.
). You could do that?
.. Exactly.
). Have you formed any opinion about the matter?
.. I have formed no opinion whatever.

Ir. Roberts: The government does not challenge.
Ir. Gray: I have no challenge.

There being no challenge, the juror was seated in the box as r number seven.)

Jo. 1, JOHN ACKER, sworn on his voir dire.

By Mr. Roberts:

). What is your business?
.. Saloon and restaurant.

SE IN CENTER

Q. Do you know any of these defendants?
A. No sir.
Q. Do you know anything about any of them?
A. No sir.
Q. Have you read about this case?
A. None whatever.
Q. Nobody has discussed it with you?
A. Not as I know of.
Q. If they did, it has made no impression on your mind?
A. No sir, none whatever.
Q. You are American born?
130 A. Yes sir.
Q. And the fact that a man was a German citizen or German born, would that prejudice you in his favor or against him either way?
A. None whatever.
Q. If you were sworn in this case you feel you could give these men a trial according to the evidence and the law as the Judge gave it to you, irrespective of who they are or where they came from?
A. Yes sir.
Q. The fact that they published a German paper or that they were interested in a German paper, would not affect your mind as to their guilt?
A. None whatever, no sir.

Cross-examined.

By Mr. Gray:

Q. You feel you can enter the jury box with a perfectly open mind and determine this matter strictly under the evidence and the law?
A. I certainly can.
Q. You would not have any prejudice against these men by reason of any matter at all?
A. No sir.

Mr. Gray: I have no challenge.
Mr. Roberts: Challenged by the government.

No. 15, MARK D. CUNNINGHAM, sworn on his voir dire.

131 By Mr. Roberts:

Q. What is your business?
A. Retired.
Q. And what was your business before you retired?
A. Men's furnishings and shirt manufacturer.
Q. Have you read about this case?
A. Yes sir.
Q. Have you talked to anybody about it?
A. Well, in a casual way only.
Q. That is, what you read or what you discussed had no effect on your mind so as to bias you or prejudice you either in favor of or

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inst these defendants?
A. No sir.
Q. You say "No."
A. "No."
Q. So that you feel you could enter the jury box and give them erfectly fair trial?
A. Yes sir.
Q. On the evidence?
A. Yes sir.
Q. Have you any prejudice in their favor because they are Germans?
A. No- any.
Q. Have you any against them because they are Germans?
A. Not any.

Cross-examined.

By Mr. Gray:

Q. Are you married?
A. Yes sir.
Q. Where do you reside?
A. 831 North 63rd Street.
Q. How long have you lived there?
A. Oh, about a little over five years, I think.
Q. Before that where did you live?
A. 4022 Girard Avenue,—4122, rather.
Q. You have always lived in Philadelphia?
A. Yes sir.
Q. Born here?
A. No- always lived, no sir. Since 1873.
Q. Born where?
A. Ireland.
Q. There is nothing at all in the fact that these men may be of German descent that would affect your judgment in rendering your verdict?
A. No sir.
Q. I take it in what you read or talked about in connection with the case, that has not caused you to form any opinion as to their guilt or innocence?
A. No.
Q. You feel you could go into the jury box with an open mind and give them a fair and impartial trial, do you?
A. That is my intention, sir.
Q. You would not be governed by any prejudices that might exist in any way, shape or form against them?
A. No sir.
Q. You would not be?
A. No sir.

Mr. Roberts: Challenged by the government.

No. 48, FRANK S. KUTZ, sworn on his voir dire.

By Mr. Roberts:

Q. Have you heard or read anything about this case?
A. Yes sir.
Q. Where? In the newspapers?
A. In the newspapers, yes sir.
Q. Have you formed any opinion about it?
A. I did at the time I read it, yes sir.
Q. You did?
A. Yes sir.
Q. Did the opinion you formed prejudice you in such a sense that you could not give these men a fair trial?
A. No.
Q. It did not?
A. No sir.
Q. In other words, I suppose until you came here you did not know exactly what the espionage act forbade in the matter of publication by a newspaper or what it was supposed to forbid, did you?
134 A. Well, of course, I knew that everybody ought to be an American.
Q. You mean in his sentiments?
A. Yes sir.
Q. But suppose a man was not an American in his sentiments but had not done the things that are forbidden by this act, you would not convict him for not being an American, would you?
A. No sir.
Q. If the act makes certain things a crime, you would want evidence to show the man had committed the crime before you would convict, would you?
A. Yes.
Q. That would be so whether he was a German or whether he was an Irishman, or whether he was an American, or what he was, would it not?
A. It would not make any difference, no sir.
Q. You would want to hear evidence, then, before you decided whether he had violated the act of Congress or not, wouldn't you?
A. Yes sir.
Q. Do you read German?
A. No sir.
Q. The fact that a man was a German, would that prejudice you either in favor of him or against him?
A. No.
Q. That is, when they are on trial for a crime?
A. No.

Cross-examined.

By Mr. Gray:

Q. You feel that if you were accepted as a juror, that when you rned what the law is, that they are charged with breaking and rned what they did, that you could determine impartially ether, what they did, violated the law, without allowing any out- e matter to enter into your determination?
A. I would.
Q. You could do that?
A. Yes.
Q. There is no doubt about that?
A. No.
Q. Suppose, for instance, and I am just supposing—you jurors ust not take everything that I may suggest to you as being defi- tely in this case,—I only want to get your frame of mind. That all. Suppose for instance, that the newspaper articles that they e charged with having published, in your opinion as you may de- rmine the matter as a juror, did not violate the law, but suppose ey were articles that you did not feel that they should have pub- hed, whether they violated the law or not, that they were im- oper criticisms, or that they were things that had better been t unsaid. Would you still convict them, or would you determine e question simply in accordance with the law?

Mr. Roberts: That questions is rather a long one. Do you want to have it read to you?

Mr. Gray: I will change it. I will put it in a very plain and simple way. I did not put it the other way because I d not want to make any reflection.

By Mr. Gray:

Q. Jurors sometimes when they go out to determine a case forget l about what the law is, and what the facts are and say, "We don't ke what this fellow did, and we are going to convict him." You re not going to do anything like that?
A. No sir.

Mr. Roberts: I hope not.
Mr. Gray: I did not want to put it that way.

By Mr. Gray:

Q. There is a certain crime which they charge these defendants ith violating, and they say that they violated it by publishing ewspaper articles. If you had all of this evidence before you, and ou really believed that the publication of these articles was not a iolation of the law, you would not convict these men anyhow be- ause of the fact that the articles offended your taste as an Ameri- an citizen?
A. No.

Q. Who, of course, stood back of his own government?
A. I would not.
Q. You would not?
A. No sir.
Q. In other words, notwithstanding the fact that they wer
Germans, even if you considered these articles were in b
137 taste, If they did not violate the law, you would give the
the benefit of that, and acquit them?
A. I would.
Q. You could do that?
A. Yes.
Q. That is what the law requires you to do. We only want
find out whether or not your frame of mind would permit you
do it.

Mr. Gray: I have no challenge.
Mr. Roberts: I have no challenge.

(There being no challenge, the juror was seated as juror numb
eight.)

No. 61, JAMES A. MILLER, sworn on his voir dire.

By Mr. Roberts:

Q. You have heard the questions that have been put to your p
decessors there in that chair?
A. I have.
Q. Do you know anything about this case?
A. Yes, from what I read in the papers?
Q. From what you read in the papers?
A. Yes.
Q. Do you allow what you read in the newspapers to affect yo
judgment that you would come to as a juror on hearing evidenc
A. I believe not.
Q. In other words, did you form any opinion from wh
138 you read in the newspapers that could not be changed by t
evidence here?
A. Well I could not say that I have.
Q. You could not say that you have?
A. No sir.
Q. Did you discuss the case with anybody?
A. Not that I recall.
Q. If there was a discussion it has not made any impression
your mind?
A. No sir, none whatever.
Q. Would the fact that some of these defendants are Germa
citizens, if they are such, or that any of them are of German e
traction, or that they publish a German newspaper in the Germa
language, prejudice you in their favor or against them, so that yo
could not try the case on the law and the evidence, and that only
A. I believe not.

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You believe not?
I believe not.

Cross-examined.

By Mr. Gray:

Is there any uncertainty about that in your mind?
Well, I should say not.

r. Gray: That is all the questions I have to ask the juror.
Mr. Roberts: The government does not challenge.
Mr. Gray: I challenge this juror on behalf of the defendant Lemke. The other defendants are satisfied with this
. The challenge, of course, is a peremptory one.

ame ruling as heretofore made.)

Exception noted for the defendants, individually, and jointly, irection of the Court.)

o. 49, GEORGE W. LAUB, sworn on his voir dire.

By Mr. Roberts:

. Have you read or heard anything about this case?
. No sir, not until last week when it — mentioned here. That all.
. Mentioned here during last week?
. Yes.
. Was there any opinion expressed, or not?
. No sir.
. Such as would affect your opinion?
. No sir.
. Do you read German?
. Whether I can read German?
. Yes.
. Yes sir.
. Have you any views or prejudices—in favor of the Germans or inst them to such an extent that you could not fairly try a man here and give the government the benefit of the evidence for the government, if it was in favor of the government, and give the Germans the benefit of the evidence, if the evidence was in *his* favor.
. Sure, yes sir.

Cross-examined.

By Mr. Gray:

. How old are you?
. Sixty nine.
. Married?
. Yes sir.

SE IN CENTER

Q. In business now, or retired?
A. I am a slate manufacturer.
Q. What you have heard discussed—I suppose it has been briefly but whatever you heard discussed has not caused you to form an opinion as to the guilt or innocence of these defendants?
A. Oh, this was not discussed in my presence.
Q. It was not discussed in your presence?
A. No sir.
Q. You can enter the jury box with an open mind and listen to the evidence and listen to the instructions that the Court, may give you as to the law and determine the matter thoroughly and impartially?
A. Yes sir.
Q. Without allowing any outside prejudices or any fear of criticism or anything of that kind to influence you?
A. No sir, it would not influence me any. I would act
141 according to the evidence.
Q. It would be in accordance with the evidence?
A. Yes sir.

Mr. Gray: I have no challenge.
Mr. Roberts: Challenged by the government.

142 No. 100, CONRAD ZITZER, sworn on his voir dire.

By Mr. Roberts:

Q. Have you heard or read anything about this case?
A. I did.
Q. In the newspapers?
A. Off and on.
Q. Do you read the German newspapers?
A. I do, once in a while.
Q. You do?
A. Yes.
Q. Have you read the Philadelphia Tageblatt?
A. Once in a while I read it.
Q. Did you read it during the summer of 1917 at all?
A. I cannot recall.
Q. You cannot recall that?
A. No sir.
Q. You are an American citizen?
A. Yes sir.
Q. And how long has it been since you became a naturalized citizen?
A. Since 1887.
Q. In a case where naturalized Germans and perhaps some unnaturalized Germans are charged with an offense against the United States, would you be prejudiced either in their favor or against them to such an extent that you could not consider the case fairly on the evidence and give a verdict according to the evidence, and that only?
143 A. Yes sir, according to the evidence.

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. Only according to the evidence?
. According to the evidence.

Cross-examined.

By Mr. Gray:

. The District Attorney and I both want men on the jury that going to try this case strictly in accordance with the evidence the law.
. Yes sir.
. You feel that you could do that, do you, without allowing any ide prejudices to control you?
. I can.
. Do you also feel that you could render what in your mind you conscientiously believe to be a fair and just verdict?
. I can.
. Irrespective of any criticisms or anything else?
. I can.
. You have not formed or expressed any opinion as to the guilt nnocence of these defendants?
. I have not.

Ir. Roberts: Challenged by the government.

o. 74, TITUS H. SCHAEFFER, sworn on his voir dire.

By Mr. Roberts:

. You have heard the questions that have been asked the other tleman here?
A. Yes.
Q. Have you read or heard anything about this prosecution?
. I have not.
. Have you formed any opinion about it?
. No, not particularly.
. You have formed no opinion about it? Could you give these n, charged with an offense against the United States, a fair trial the evidence, and only on the evidence?
. Only on the evidence.
. Would the fact that they were Germans prejudice you either in ir favor or against them, so that you could not give them a fair l?
. On the evidence.
. On the evidence only?
. Yes sir.
. On the evidence only?
. On the evidence only.
. No prejudice, if you had one, against the Germans, or no judice in their favor, would swing your verdict either way, against evidence. Is that right?
. Yes.

OSE IN CENTER

Cross-examined.

By Mr. Gray:

Q. What business are you in?
A. Stone cutter.
Q. And where do you reside?
A. Fleetwood, Berks County.
Q. And how long have you lived there?
145 A. Twenty six years.
Q. Are you married?
A. Yes sir.
Q. And you have not formed or expressed any opinion as to guilt or innocence of any of these defendants?
A. No.
Q. Would the fact that any of them might be either Germans of German descent influence your verdict?
A. No.
Q. There is no question about that in your mind, is there?
A. No.
Q. You understand, of course, that the duty of a juror is to termine the issue that is involved, and to say whether a man guilty or not guilty, as it is shown by the evidence, and that alo You understand that?
A. Yes sir.
Q. You would allow no outside prejudice or feeling of any k to interfere with your proper consideration of your verdict?
A. No sir.

Mr. Gray: I have no challenge.
Mr. Roberts: No challenge.

(There being no challenge, the juror was seated in the box juror number nine.)

No. 89, L. Howard Weatherly, sworn on his voir dire.

By Mr. Roberts:

Q. You have heard about this case in the questions t
146 have been put to the others jurors?
A. Yes.
Q. Have you formed any opinion about the case?
A. No.
Q. Have you heard about it, or read about it?
A. I have read about it.
Q. What you have read about it has not affected you in such way that you could not give these defendants a perfectly fair tria
A. I think not.
Q. The fact of their nationality would not affect you either agai them or for them, so that you could not try this case on the dence?
A. No.

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Cross-examined.

By Mr. Gray:

Q. Have you read about the case?
A. Yes.
Q. At the time you read about — did you form any opinion about
e guilt or innocence of the defendants?
A. I think not.
Q. Well, have you a clear recollection on the subject? When you
y you think not, it does not indicate to me positively whether you
d or did not.
A. That is hard to say. It leaves an impression, in reading,
the same as any other article in a newspaper, but as far as
47 determining the guilt or innocence, I think it left no im-
pression either way.
Q. And you feel now, if you were accepted as a juror, that you
ould render your verdict strictly in accordance with the evidence
d the law, and allow nothing outside to control you?
A. If the articles published contained charges against the national
vernment, I think it would influence me.

Mr. Roberts: I have no challenge.
Mr. Gray: This juror is challenged on behalf of the defendant
ogel, if your Honor pleases, but he is acceptable to the other de-
ndants.

(The same ruling as heretofore entered.)

(Exception noted, for the defendants, individually and jointly,
direction of the court.)

No. 57, JOSEPH MCCONNELL, sworn on his voir dire.

By Mr. Roberts:

Q. Have you heard or read anything about this case?
A. I have.
Q. Have you formed any opinion about it?
A. I did when I read about it, yes sir.
Q. I do not want to know what your opinion was.
A. I am not going to tell you, either.
Q. But is it such an opinion that you could not fairly try this case
on the evidence?
48 A. I think it is.
Q. You do think it is?
A. Yes, sir.
Q. Do you mean to say, if you were sworn in this case, that your
inion is such that, if the evidence indicated the guilt of the defend-
nts, you might be so prejudiced that you would have to acquit them,
if it indicated their innocence, you might be so prejudiced that you
ould convict them?
A. No- to that extent, but I would feel, in my condition of mind,

OSE IN CENTER

that I could not give these men a fair trial. That is what yo to know, is it?

Q. I do want to know that.

A. Yes sir.

Q. That is a surprising sta'e of mind to me, but I am no to press you to serve on this jury if you feel that way.

Mr. Roberts: I will chailenge this juror for cause.

Mr. Gray: I have no objection to the challenge. (Challe lowed.)

No. 70, HOWARD T. PAINTER, called affirmed on his voir di

By Mr. Roberts:

Q. Have you heard or read of this case?

A. In the newspapers, yes sir.

Q. Did your reading of it cause you to form such an opini you could not give these defendants a fair trial, or th

149 could not give the government a fair trial?

A. No, not anything.

Q. Wait a minute. We want to get it clear. You could g defendants a fair trial, could you?

A. Well, I rather entertain a prejudice, you might say. pressed an opinion at the time, yes.

Q. You expressed an opinion on what you had read of it?

A. In the papers, yes sir.

Q. You do not know the evidence I am going to offer, or t dence Mr. Gray is going to offer?

A. No I do not.

Q. If you were sworn as a juror, Mr. Painter, you would g government the fair value of its evidence and you would gi defendants the fair value of their evidence, and you would the evidence, under the instructions of the Judge, as to what ev was necessary to conviet, and if you did not find that evidence you would acquit these men. Am I right in stating your attitu

A. I would try to do that, yes sir.

Q. If you took your oath to do that, do you believe you cou aside any passion or prejudice that you might have and treat t fendants with the same fairness you would treat men of any nationality?

A. I would try to.

Q. Don't you think you could do it?

A. I have rather a strong opinion about certain thing

150 Q. Let me ask you about certain things. If you strong opinion against one of these defendants for criti the government, you would not convict him for that, unless Co made such a criticism a crime, would you?

A. No sir.

Q. You might sit down in the jury box and say, "If that wrote that, I would like to punch him in the face. That is m sonal feeling about it, but it has not been made a crime, and wh

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has done, I have no right to render a verdict that will send him to jail, unless Congress has made such criticism a crime?" You could do that, couldn't you?

A. I think so.

Q. Wouldn't you do that if you were sworn as a juror in this case?

A. I would.

Cross-examined.

By Mr. Gray:

Q. The important fact, though, Mr. Painter, is this; here are men, possibly a German among them, but at least some of them of German extraction and at this present moment, though this offence is alleged to have been committed back in the summer of 1917, we are at war with Germany. That naturally creates a feeling in the mind of every man. But when these men are brought to a Court of Justice, they are entitled, under our law, and we feel that our laws are really the highest consideration, to be given a fair and impartial
151 trial, and that means that a juror says that a man is guilty or innocent from what he finds in the evidence, and the law as the Court gives it to you, and nowheres else. Can you, if you are accepted as a juror, render your verdict and determine the question of the guilt or innocence from the evidence alone, dismissing every feeling you have got, and not let that enter into your thoughts at all?

A. That is a very difficult thing to say, sir. I have very strong ideas about the foreign press, the foreign language, in this country, and have expressed myself on a good many occasions, and I am very much afraid that a certain amount of prejudice would go with my decision more or less. I could not help it.

Q. And that might prevent you from rendering what would otherwise be a fair and impartial verdict?

A. Yes. I do not like to place myself in that position. It would be just like judging my own son, or some relative in my family, if he were accused of crime. I have very strong convictions.

Mr. Gray: I challenge the juror for cause.

(Challenge allowed.)

No. 47, FREDERICK G. KURTZ, sworn on his voir dire.

By Mr. Roberts:

Q. Do you know anything about this case from reading or discussion?

A. No sir.

Q. Then, I take it, you have no prejudice against these men as individuals?

A. No.

152 Q. You don't know them?

A. No sir.

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Q. Do you think you could give them a fair trial on the evidence?
A. Evidence only.
Q. The fact that they are Germans, or of German descent would neither prejudice you in their favor nor against them, so far as affecting your verdict is concerned?
A. No sir.

Cross-examined.

By Mr. Gray:

Q. You have not formed or expressed any opinion as to the guilt or innocence of these men?
A. No sir.
Q. And you would not allow any prejudice or feeling in any way to enter into your verdict?
A. No sir.
Q. You would not be afraid to render what you thought was a proper, conscientious verdict, irrespective of any criticisms that might be addressed to you afterwards?
A. No sir.
Q. In other words, if you felt these men were guilty beyond a reasonable doubt, as the law requires the government to prove it, you would say so?
A. Yes sir.
Q. And if you thought they were innocent, you would say so?
153 A. Yes sir.
Q. There is no question about that in your mind?
A. No sir.

Mr. Gray: I have no challenge.
Mr. Roberts: I have no challenge.

(There being no challenge the juror was seated in the box as juror number ten.)

No. 75, EDWARD H. SCHLECHTER, sworn on his voir dire.

By Mr. Roberts:

Q. Mr. Schlechter, I see that you are a printer by profession?
A. Yes sir.
Q. A newspaper printer?
A. For twenty five years I have been.
Q. Do you read the German newspapers?
A. I do. I can and do at times.
Q. Have you ever read the Philadelphia Tageblatt?
A. I have, but not recently.
Q. Do you know any of the defendants?
A. I do not.
Q. Have you heard them referred to in this particular case?
A. I have not, but I have heard discussions of the matter.

Q. You have?
A. Yes sir, with other newspaper men.
Q. Have you discussed the matter to such an extent that you have formed an opinion of the guilt or innocence of these men?
A. I have entered into argument about it.
Q. I say, have you formed such an opinion——
A. Yes I have.
Q. That you feel you could not give these men a fair trial?
A. I think I would be prejudiced.
Q. You do?
A. Yes sir.
Q. You feel you would be so prejudiced that you could not, under your oath, give them a fair trial?
A. It would take considerable evidence to overweigh my opinion, to have me change it.
Q. I should rather think, if you formed an opinion like that, you ould lean over backward against the opinion for fear it would in- ence you, wouldn't you?
A. I hardly feel that I could do so.

Mr. Roberts: I will challenge this juror for cause..

Cross-examined.

By Mr. Gray:

Q. What paper are you connected with?
A. My father was the publisher of a German paper up to 1916. was the Independent Republican of Allentown, Pennsylvania.
Q. That paper is not in existence?
A. It is suspended. 1916.
Q. What is the name of it?
A. Independent Republican is the translation of it.
Q. It was published in Allentown?
A. Published in Allentown.
Q. What are you doing now?
A. I am a manufacture- of celluloid buttons and novelties, and on, and connected with the courts of Lehigh County as one of the ers.

Mr. Gray: I have no objection to the challenge for cause.
The Court: Let the challenge be allowed.

No. 93, ELISHA P. WILBUR, sworn on his voir dire:

By Mr. Roberts:

Q. Have you heard the discussion of this matter here this morn- ?
A. I could not hear it. I am hard of hearing. I did not hear of it.
Q. You did not hear it at all?

A. No.

Q. Do you hear me all right now?

A. Yes, sir.

Q. This is a prosecution against these five men here for publishing articles or being connected with the publication of articles which are alleged to be a violation of the Espionage Act which forbids the publication of false reports with intent to interfere with the Military and Naval operations or giving aid and comfort to the enemy, in plain words, and also articles that constitute, under the interpretation of the Act, obstruction of recruiting service. Have you heard anything of that prosecution?

A. Not at all.

Q. Have you heard anything of it?

A. Nothing.

Q. If you were sworn as a juror in this case, do you feel you could *you* give these men a fair and impartial trial?

A. I do.

Q. One of them, I think, is said to be—this is only provisional and preliminary—a German citizen, an alien enemy. Would
157 that make any difference in your finding a verdict according to the evidence, and that only?

A. No.

Q. In other words, you would understand that it is the Government's burden here to prove that there has been a violation of the Act, and unless that was done you would not bring in a verdict of guilty in this case?

A. No.

Cross-examined.

By Mr. Gray:

Q. Can you hear me perfectly plain now?

A. Yes.

Q. The fact that any of these men are of German descent would not affect your verdict?

A. Not a bit.

Q. You have not formed any opinion as to their guilt or innocence before you came here?

A. No.

Q. Is there any prejudice existing in your mind of any character that would prevent you from giving these men a fair trial?

A. No, I think not.

Q. What business are you engaged in now?

A. None.

Q. What business were you in?

A. Coal and banking.

Mr. Roberts: No challenge by the Government.

158 Mr. Gray: I challenge this juror on behalf of the defendants Werner and Darkow, if your Honor pleases. The juror is acceptable to the other defendants.

(Same ruling as heretofore made.)
(Exception noted for the defendants, individually and jointly, by direction of the court.)

No. 50, WILLIAM L. LAWSON, sworn or his voir dire.

By Mr. Roberts:

Q. You have heard the discussion here about this case?
A. I have.
Q. Have you formed any opinion about the case at all?
A. Well——
Q. Have you? Let me put it differently. Have you formed any opinion about the guilt or innocence of these defendants which would affect your verdict if you were sworn as a juror and had heard the evidence in the case?
A. That does not change it any.
Q. What is that?
A. That does not change it any, because I say I have.
Q. You have?
A. Yes, I have an opinion.
Q. You have?
A. Yes.
Q. And is it a fixed opinion that you feel that your prejudices could not be removed by evidence?
159 A. My opinion—I am an American.
Q. We do not want to know what your opinion is.
A. No. I know, but I am an American. It is up to you folks.
Q. You might as well tell us what your prejudice is, I am afraid.
A. Well, that is it.
Q. Do you feel you are any better an American than these other men who sit here?
A. No, not any better. I do not think so, no, sir.
Q. Not a bit. Could not you give the worst German there ever was a fair trial if he was brought up for trial under the statute which said that a man should not be found guilty unless he had done a certain thing? You do not mean to say you would say he was guilty, whether he had done it or not, would you? Be frank with me. If you were sworn as a juror to try a man according to the evidence, and the charge is that he must have done a certain thing to be guilty, do you mean to say that you would sit there and say on the evidence that the man did not do it, and he is not guilty, but I am going to vote him guilty, any how?
A. No, I would not do that.
Q. Then, if you were sworn in this case as a juror, and you sat there and heard the evidence, and you weighed it, and if the evidence did not bring the man within what the statute said was a crime, whether he was a German or the best American that ever lived, would not you equally acquit him, if he was not within the statute?

160 A. I would do justice to any man.

Q. Of course you would. If you were sworn to listen to the evidence, and if the evidence did not convince your mind that the man was guilty, you would not say he was guilty, would you? You might say you did not like him, but you would not say he was guilty?

A. No, that would not make any difference to me, whether I liked him or not.

Q. You would find him on the evidence guilty or not guilty, wouldn't you?

A. That is right.

(No cross-examination.)

Mr. Gray: The juror is challenged by the defendants Vogel and Schafer. To the other defendants he is acceptable.

(Same ruling as heretofore made.)

(Exception noted for the Defendants, individually and jointly, by direction of the court.)

No. 7, J. TAYLOR BROWN, sworn on his voir dire.

By Mr. Roberts:

Q. Have you read of this case or talked about it?

A. Yes, sir, I have.

Q. Have you formed any opinion about it?

A. I have not read that much of it to form an opinion.

Q. Then, I take it you have no conviction or prejudice about this particular case or these particular defendants that would

161 affect your mind at all?

A. None whatever.

Q. And you have no such prejudice in your mind that you could not try this case according to the evidence because they happened or some of them happened to be German born or still German citizens?

A. No, that would not have any effect on me.

Q. In other words, if you were sworn as a juror here, you would want to know what the evidence was, and you would want to know what the Act provided, and then you would try to determine whether these men had broken the Act?

A. That is the idea.

Q. And it would not make any difference to you whether they were Germans or not Germans in your determination of that question?

A. No. Justice. That is all.

Cross-examined.

By Mr. Gray:

Q. How old are you?

A. Thirty-one.

Q. Thirty-one?
A. Yes, sir.
Q. You are married?
A. Yes, sir.
Q. In what business are you engaged?
A. Hats. Felt hats, Stetson.
Q. You are employed at Stetson's?
162 A. Yes.
Q. In what capacity?
A. In what department?
Q. In what capacity are you employed?
A. I am in the stock department.
Q. You say you did read about this case?
A. I read a little of it, not that I could form any opinion.
Q. You did not form any opinion?
A. No, sir.
Q. Do you feel that you could determine this case according to the law and the evidence without regard to who the defendants might be?
A. Yes, sir.
Q. You would do what you considered your conscientious duty after you were sworn irrespective of whether someone else liked it or did not like it?
A. Yes.
Q. You would not fear any criticism, in other words?
A. No, none whatever, as long as it is justice on my part.

Mr. Roberts: No challenge by the Government.
Mr. Gray: We have no challenge.

(There being no challenge, the juror was seated in the box as juror No. 11.)

163 No. 19, JAMES H. DUNKLEBERGER, sworn on his voir dire.

By Mr. Roberts:

Q. Have you read or heard anything of this case?
A. I did, yes.
Q. Did you form any opinion?
A. No, sir.
Q. You have no such fixed opinion about the guilt or innocence of any of these defendants about to be tried as to affect your judgment and your verdict in the jury box?
A. No, sir.
Q. You could render a fair verdict according to the evidence?
A. Yes.
Q. Have you any prejudice in favor or against any of these defendants by reason of the fact that they are German citizens?
A. No, sir.
Q. In other words, if they have been guilty of a crime, it is a crime, whether they are Germans or not, and if it is not a crime,

it is not a crime, whether they are Germans or not. Is that t
way you look at it?
A. That is the way I look at it.

(No cross-examination.)

Mr. Gray: I challenge this juror on behalf of the defenda
Schafer and Darkow. He is acceptable to the other defendants.

(Same ruling as heretofore made.)
164 (Exception noted for the defendants, individually a
jointly, by direction of the court.)

No. 32, JOHN HAMPTON, affirmed on his voir dire:

By Mr. Roberts:

Q. Have you read or heard anything of this case?
A. I have read some of it, yes.
Q. Have you formed such an opinion that you could not serve
a juror and render a verdict solely and in accordance with the
dence and the law?
A. No.
Q. You feel you are competent to do that?
A. I do.
Q. I take it, when you say you are competent to do that, y
also mean that the fact that these people may be of German ext
tion, or of German citizenship, would not cause you to rende
verdict of guilty if you really thought the crime had not been m
out on the evidence?
A. No.

(No cross examination.)

Mr. Roberts: No challenge by the Government.
Mr. Gray: I challenge this juror on behalf of the defenda
Lemke and Vogel. The other defendants are satisfied.

(Same ruling as heretofore made.)
(Exception noted for the defendants, individually
165 jointly, by direction of the court.)

No. 28, HUGH GILBERT, affirmed on his voir dire:

By Mr. Roberts:

Q. Have you heard or read anything of this case?
A. I did in the newspapers at the time.
Q. At the time the other case was tried?
A. Yes.
Q. Did you form any opinion as to the guilt or innocence of th
men charged under the Espionage Act, which is the charge we
trying now?
A. I did not.

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Q. I take it, then, there is nothing in the way of personal opinion about these five defendants or personal prejudice that would prevent your giving them a perfectly fair trial according to the evidence and the law?
A. There is not.
Q. And included in your last negative answer I take it is the fact that whether they are Germans or of German descent would not influence you to find them guilty unless the evidence and the law proved them so?
A. It would not.

(No cross examination.)

Mr. Gray: The juror is challenged on behalf of the defendants Werner and Darkow. The other defendants have no challenge that they wish to make to this juror's serving.

(Same ruling as heretofore made.)
166 (Exception noted for the defendants, individually and jointly, by direction of the court.)

No. 44, GEORGE KIMBALL, sworn on his voir dire:

By Mr. Roberts:

Q. You have heard or read about this case, have you?
A. I presume I read about it at the time of the publication. Since that I know nothing about it.
Q. You have no opinion as to whether they are guilty or innocent?
A. No.
Q. You have heard none to that effect?
A. No, sir, none whatever.
Q. If the evidence, beyond a reasonable doubt, proved to your mind that they were guilty, would you vote for a verdict of guilty?
A. If the evidence showed it, yes, sir.
Q. And if the evidence did not satisfy your mind beyond a reasonable doubt that they are guilty, I take it that you would vote for acquittal?
A. Positively, yes, sir.
Q. Would the fact that these men who are on trial are either of German extraction or alien enemies affect your judgment of whether they were guilty or innocent under the statute and under the evidence?
A. No, sir.
167 Q. It would not?
A. No, sir.

(No cross examination.)

Mr. Roberts: I have no challenge.
Mr. Gray: I challenge on behalf of all of the defendants.
Mr. Roberts: I ask that the challenge be not sustained, as the de-

fendants have now exercised ten peremptroy challenges, and exhausted their rights in that behalf.

Mr. Gray: Your Honor understands that it is because of th ing that I have, that that act trespasses upon the constitutional of the defendants, that I am exercising this right of challenge or claiming the right to challenge.

The Court: I understand, Mr. Gray, considering all the d ants as a single party, to quote the phraseology of the act, ther been ten peremptory challenges exercised.

Mr. Gray: I do not know just what view your Honor takes but——

The Court: I mean there is no question as to the number.

Mr. Gray: There is no question, if your Honor will let me in my way, that the aggregate of the challenges exercised by t dividual defendants is now ten, but not all of the defendants bar of this court have expressed their wish to challenge any near that number, and, therefore, I suggest to your
168 that, not having expressed their desire to challeng wheres near that number, they are not bound by wha co-defendants may have done with respect to any particular and that, therefore, they are still within their rights.

The Court: I rule that under the provisions of this Act o gress all the defendants will be deemed a single party, and te lenges having been exercised in the aggregate, the right of ch is exhausted. I will give each of the defendants individuall jointly an exception.

Mr. Gray: I ask for an exception to your Honor's ruling, that I may have it stated in another way, I ask for an excep the refusal of your Honor to permit this challenge to be made.

(Exceptions noted for the defendants, individually and j as requested, by direction of the court.)

The jury is composed of the following jurors:

1. Levi S. Thomas.
2. Elmer Billingfelt.
3. Charles R. Sheeler.
4. Samuel L. Fry.
5. Franklin D. Grimes.
6. Justice J. Cox.
7. John W. Zeigler.
8. Frank S. Kutz.
9. Titus H. Schaeffe
10. Frederick G. Kur
11. J. Taylor Brown.
12. George Kimball.

(The jurors were sworn and affirmed.)

At 12.40 P. M. a recess was taken until two o'clock P. M.

169 2 p.

Present: Parties as before noted.

Mr. Roberts opened the case to the jury on behalf of the G ment.

COPY BOU

Evidence on Behalf of the Government.

JAMES T. CORTELYOU, having been duly sworn, was examined and testified as follows:

By Mr. Roberts:

Q. What is your official position under the United States Government?
A. Post Office Inspector in charge of the Philadelphia Division.
Q. Were you present on September 10th, 1917, when a warrant of search and seizure was served at the office of the Philadelphia Tageblatt Publishing Association?
A. Yes sir.
Q. On North 6th Street in this City, isn't it?
A. Yes, sir.
Q. At that time, when that warrant was served, what did you do with regard to gathering together copies of a paper?
A. In making the search, in co-operation with the Department of Justice Agents, we secured a complete file of the paper for the months of April, May, June, July, August and September up to and including the date that we were there.
Q. That was the 10th that you were there?
A. Yes, sir. We secured that file.
Q. What was done with that file?
A. That was turned over to the Department of Justice Agents.
Q. Where was it brought, to your personal knowledge?
A. To the Federal Building here in a mail wagon.
Q. Did you personally do anything about gathering these papers together?
A. I assisted in getting a complete file.
Q. And in doing so you looked at the papers that you were handing?
A. Yes, sir.
Q. I show you Government's Exhibits Nos. 1, No. 5, No. 10, No. 14, No. 20, No. 24, No. 28, No. 33, No. 38, No. 43, No. 52, No. 57, No. 59, No. 61, No. 63, No. 65, No. 67, No. 69, No. 71, No. 73, No. 75, No. 78, No. 80, No. 82, No. 84, and No. 86, and ask you what they are?
A. Copies of this publication.
Q. Copies of the Philadelphia Tageblatt?
A. The Tageblatt, yes, sir. Some of the Sunday issue and others of the daily issue.
Q. Did you also assist in gathering together other papers there?
A. Yes, sir.
Q. What kind of other papers?
A. They were clippings attached to brown sheets of paper containing notations and also some books and card index files.
Q. I show you Government's Exhibit No. 9, which appears to be a brown paper sheet with some clippings pasted on it. Is that one of the papers that you got?

D CLOSE IN CENTER

A. There were a great many similar papers to this.
Q. Where were they brought?
A. They were brought to the Federal Building here.
Q. To the best of your knowledge and belief is that one of the
A. To the best of my knowledge and belief it is.
Q. I show you Government's Exhibit No. 32, which seems to b similar thing, a sheet of paper with a clipping pasted on it. Is t to the best of your knowledge and belief one of the papers that brought?
A. Yes, sir. Quite a number were marked in that manner.
Q. I show you Government's Exhibit No. 37, which appears to the same thing. What have you to say of that?
A. Yes, sir.
Q. That is it—the same?
A. Yes, sir.
Q. I show you Government's Exhibit No. 42.
A. To the best of my knowledge, that is another.
Q. I also show you Government's Exhibit No. 47, which appe to be the same thing. Does the same answer apply to that?
A. Yes, sir.
Q. I show you Government's Exhibit No. 51, which appears to the same thing. Does the same answer apply?
172 A. Yes, sir.
Q. Also Government's Exhibit No. 56. How about that?
A. Yes, sir.
Q. The same thing?
A. Yes, sir.

Cross-examination.

By Mr. Gray:

Q. When you say with reference to these latter exhibits that h been shown to you they appear to be the same thing, you mean t they appear to be certain slips of newspaper attached to a folder some kind?
A. I have seen these same exhibits on several occasions in c nection with the examination of these papers, and they are the sa exhibits that I have seen from the start, from the time these pap were brought here.
Q. You cannot say that anyone of these exhibits was brought you from the place of the Tageblatt at all?
A. No, sir.
Q. You only know that you have seen them down here in t Post Office Building?
A. And at the place of the Tageblatt before that.
Q. You do not know that these are the same ones you saw at t Tageblatt?
A. Several slips pasted on paper are the same as these. I c not read German. I do not know the contents.
Q. Then, there is nothing about them that leads you to say be

COPY BOUN

under oath that these slips are the slips that came from the
73 Tageblatt office?

A. Only to the best of my knowledge and belief, having
en similar slips there and these same slips in the office.

Q. I understand, but there is no marking, there is no identification
ark—there is nothing on them by which you can say they are any
ips that you brought from the Tageblatt office, on any of them?

A. I did not bring any.

By Mr. Roberts:

Q. You say you did not bring them. What did you do?

A. I turned them over to the agents of the Department of Justice,
nd provided a mail wagon, and had them brought up.

By Mr. Gray:

Q. But you cannot, then, say that they are the slips that you
rned over to the representatives of the Department of Justice, can
u?

A. No; because I could not read the contents.

Q. Whatever the "because" is, you cannot say that they are the
ips?

A. No, sir. Other than that these papers that are right here have
en in the custody of the Government since the date of that raid,
nd were with the papers that I examined immediately after the raid
ere.

Q. You mean somebody showed you what was down here and these
apers were with them, but whether they are the papers that you
gave to the representative of the Department of Justice you do
74 not know?

A. I do not know.

Q. And that is true also of the newspapers, is it not?

A. Those particular copies right there, no, but I know that I
thered a copy of every issue for every month and turned them
er.

Q. You know that you turned over something to the representa-
es of the Department that you designate as a copy of the particu-
issues for those months that you gathered?

A. Yes, sir.

Q. But whether these are those papers or not you do not know?

A. Not the identical ones. Some of them we had five and six
pies of, each date.

TODD DANIEL, having been duly sworn, was examined and testified
follows:

By Mr. Roberts:

Q. What is your official position under the United States Govern-
nt?

A. Special Agent of the Department of Justice.

CLOSE IN CENTER

Q. Were you connected with this particular division of Phil
phia in the summer and fall of 1917?

A. I was. I was First Assistant to Mr. Garberino.

Q. And you are now acting chief, are you not?

A. I am now acting Division Superintendent.

Q. Were you present on September 10th at the office o
175 Philadelphia Tageblatt Publishing Association, at the
of the execution of this warrant of search and seizure?

A. I was, on September 10th.

Q. Will you just describe in a very few words to these gentl
what the place was, what there was there?

A. Mr. Garberino and myself, together with other agents o
Department of Justice, Mr. Cortelyou, Post Office Inspector,
Mr. Kenny, Deputy Marshal, proceeded to the offices of the Phi
phia Tageblatt, which are on North 6th Street, to serve a s
warrant. Mr. Kenny possessed the search warrant, the D
Marshal. We entered the offices and met the defendant Mr. W
and the search warrant was served upon him by Deputy Ma
Kenny in our presence. We thereupon started to make a full s
of the premises.

Q. Let me interrupt you. What was there on the first flo
that place?

A. On the first floor of the premises as you walk in the do
the right was a counter. Behind the counter was a kind
office, and Mr. Werner was standing behind the counter. O
other side, on the left hand side, in the front, was a small office
in the back of the first floor there was a good deal of mach
Upstairs, as you walked up the steps, there was one big room
the Linotype machines, and one small room partitioned off,
was the editorial room. That was on the second floor. The
were at the time working on the Linotype machines.

176 Q. Amongst other things did you gather up any
papers there?

A. We gathered up newspapers. A file of the Philadelphia
blatt and the Sonnstageblatt.

Q. What did you personally see done with the file of newsp
that were gathered there? Where were they put next?

A. They were gathered up, but I did not absolutely see
placed in the wagon.

Q. You did not see them placed in the wagon. Did you see
left behind?

A. No; I did not see them left behind.

Q. When you got up to the Post Office Building what did y
taken out of the wagon so far as the file of papers is concerned

A. A file of the Philadelphia Tageblatt.

Q. You did see it taken out of the wagon there?

A. And brought in the office. Brought up.

Q. I show you the same exhibits which I showed the pr
witness, and which I will not repeat by number, because my
tion to him will identify them, and ask you if they are taken
that file of the Tageblatt?

COPY BOU

A. This is the file of the Philadelphia Sonnstageblatt.
Q. There are some Sonnstageblatts and some Tageblatts?
A. And some Tageblatts.
Q. Where was the file kept from the time it was brought to the Post Office Building?
A. When it was brought to the Post Office Building—down
77 there they were placed in mail sacks. They were then in the office of the Bureau of Investigation and opened and the papers taken out. Some of them then were taken to the District Attorney's Office, and at that time, under the personal supervision of Mr. Garberino, an inventory was made of the papers.
Q. Is Mr. Garberino here now?
A. Mr. Garberino I understand is at present in Mount Holly, New Jersey.
Q. You are endeavoring now to get in touch with him?
A. That is right.
Q. He has been on Government work in San Francisco?
A. In San Francisco.
Q. When did you first hear that he had gotten back to Mount Holly?
A. In Washington yesterday.
Q. As soon as you came up you tried to get him here this morning?
A. That is right.
Q. To the best of your knowledge and belief are these papers the papers that have been in the office of the Department of Justice and of the District Attorney from that day to this?
A. To the best of my knowledge and belief they are.
Q. What are those papers?
A. They are copies of the Philadelphia Tageblatt and of the Philadelphia Sonnstageblatt.
Q. Did you gather any other papers up at that time?
78 A. We did. We gathered practically all the written material, both typewritten and longhand, and clippings from papers, and also some peculiar yellow slips of paper in a long scrawling hand, that we took from the Linotype machines and from other parts of the premises.
Q. Were any of those clippings taken from the basement, found there amongst scrap paper?
A. I understand they were, yes, sir. A good many papers were taken.
Q. Let me ask you, showing you Government's Exhibit No. 9, whether that is the character of paper that was taken from there?
A. I can say that this is the character of paper that was taken.
Q. Can you say whether that particular slip was taken from there, to your personal knowledge?
A. I cannot.
Q. Applying that to these other Government exhibits, Nos. 32, 37, 42, 47, 51 and 56, is your answer the same, that those are the character of slips that were taken, but you cannot say to a certainty that they are the identical slips taken?

D CLOSE IN CENTER

A. That is so. A great many slips of that character were taken.

Q. You are not prepared to say by physical inspection of these at that time and this time that these are the identical ones?

A. No, sir.

Q. Were you present at a conversation between Mr. Werner and Mr. Garberino on September 12th?

A. I was not.

179 Cross-examination.

By Mr. Gray:

Q. The same answer that you made with reference to these exhibits that have just been shown you, contained in the folders, these slips as they have been called, applies also to the newspapers, does it not? You do not know that they are the newspapers that were brought from there, do you?

A. No; I cannot say that they are absolutely the same.

Q. Your search party took everything in the way of a document that could be found in the office, did it not?

A. Well, there was a hurried examination of the documents in the place, and some documents that appeared of no particular significance were not disturbed. Some books of that nature were not taken.

Q. But from the top of their building to the cellar you took everything in the way of papers, either with writing on or printing on that you in your experience thought had any bearing on this case?

A. That is so.

Q. You even had the safe opened for you?

A. Not in my presence.

Q. You know that it was opened?

A. I cannot say definitely that I do know it was.

Q. You asked for their books?

A. Not all, no, sir.

Q. All their books that were of any importance?

A. All their books that we conceived would be of any importance.

180 By Mr. Roberts:

Q. All that you thought were of any importance?

A. Yes, sir.

By Mr. Gray:

Q. And you did that under the power of a search warrant?

A. That is right.

Q. You took them by force? I am not objecting. I only want to get the fact.

A. A warrant of law, yes, sir.

Q. By a warrant of law, and took them from these defendants?

A. That is right.

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Redirect examination.

By Mr. Roberts:

By the way, I think you said that when you went in Mr. Wer-
as there. Are sure about Mr. Werner?
I should have said Mr. Lemke.
Mr. Lemke is the man?
Yes, sir. The gentlemen sitting over there (indicating). He
t the counter.

Ir. Roberts requested Mr. Lemke to stand up, which he did.)

e Witness: That is the gentleman that we met as we came in
oor.
. Gray: So that there may be no question as to the identifica-
tion, and so the jury may know as the gentlemen are named
who they are, this is Mr. Lemke, this is Mr. Vogel, this is
Mr. Schafer, this is Mr. Werner, and this is Mr. Darkow (in-
ng). There are five defendants on trial.

By Mr. Roberts:

You said something a minute ago about getting a lot of writing
around the Linotype machines. I show you a bundle and ask
f that is some of that writing that you got at the time?
These are the papers. That is the reason that they are peculiar.
You could recognize anything that was peculiar amongst these

Exactly so, yes, sir.

GUST F. HERBERT, having been duly sworn, was examined and
ed as follows:

By Mr. Roberts:

On September 10th, 1917, what was your business?
Editor of the Philadelphia Tageblatt.
How long had you been one of the editors of the papers at that
Approximately, I mean.
About two years.
Before that had you been employed by the paper?
Yes, sir.
In what capacity then?
As reporter.
I will ask you to look at the same bundle of exhibits, begin-
ning with Government's Exhibit No. 1 and ending with Gov-
ernment's Exhibit No. 86, which is the same bundle that I
showed to the witness Cortelyou sometime ago, and I ask you
k at them and tell me what they are.
Those are copies of the Philadelphia Sonnstageblatt and copies
Philadelphia Tageblatt.

CLOSE IN CENTER

Q. These are copies of the Philadelphia Sonnstageblatt and t
Philadelphia Tageblatt?
A. Yes, sir.
Q. There is no question at all about what they are no-, is there?
A. No, sir.
Q. Was there an issue of that paper published every day duri
the period from June 15th to September 10th, 1917?
A. Yes, sir.
Q. During the period from June 15th to September 10th, who w
the Chief Editor of the Tageblatt?
A. Mr. Werner.
Q. Mr. Louis Werner, who sits here?
A. Mr. Louis Werner, yes, sir.
Q. Who was the Managing Editor?
A. Dr. Darkow.
Q. Who was the business Manager of the concern?
A. Mr. Lemke.
Q. Do you personally know who was the President of the corpo
tion?
A. Yes, sir. I know these gentlemen.
Q. You do?
A. Yes, sir.
183 Q. Who was it?
A. Mr. Schafer.
Q. Mr. Schafer, who sits here?
A. Yes, sir.
Q. Do you personally know who was the treasurer?
A. Yes, sir.
Q. Who?
A. Mr. Vogel.
Q. Let me ask you this: What was your employment during t
period from June 15th to September 10th, 1917, and when I s
"your employment" I mean what did you do towards making t
paper?
A. Making the local news.
Q. You made local news?
A. Yes, sir.
Q. By "local news" what do you mean?
A. That means items of local interest. Philadelphia news.
Q. How did you make that news?
A. Translated it from the English papers into the German.
Q. Translated it from the local English papers?
A. Yes, sir.
Q. Did you clip any of that from local German papers?
A. Also.
Q. What other local German papers are there from which y
clipped? The Democrat?
A. The Philadelphia German Demokrat.
Q. No other of them?
A. No other.

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184 Q. During that period at any time did you write any editorials?

A. No, sir.

Q. During that period at any time did you make up what might be called the foreign or the political news?

A. I might.

Q. On what occasions might you have?

A. Well, if Dr. Darkow had probably too much work he would probably ask me to translate an item for him, and in that way, and when Dr. Darkow was away.

Q. That leads me to the question of what habitually was Dr. Darkow's part in making up the paper?

Mr. Gray: That is objected to.

Mr. Roberts: I intend to follow it, if your Honor pleases, by showing who and what persons, and under what circumstances, did any part of Dr. Darkow's work, and whether any of the work that is attributed to Dr. Darkow by the Government here was the work of these people who substituted for him. Your Honor, I have got to begin somewhere.

The Court: Yes; that is true enough, but I assume the objection is based, in part at least, upon your use of the word "habitually."

Mr. Gray: Precisely. What they may have done or what anyone may or may not have done, or what Darkow or any of the defendants may not have done with reference to any of the particular things which are alleged in this indictment, I have no objection to.

185 The Court: They may show what he did, which I assume is the sense in which you used the word "habitually," from day to day.

Mr. Roberts: Yes.

The Court: That is, his employment.

Mr. Roberts: That is what I mean.

By Mr. Roberts:

Q. What was Dr. Darkow's employment and work in making up the paper?

A. Making despatches.

Q. When you say "making despatches" what do you mean?

A. I mean he was making the foreign news, or news from this country. All that news which would not come under local news Dr. Darkow made.

Q. How was that made?

A. The same way, too. Clippings from English local papers or clippings from German papers, German local papers and German New York papers.

Q. If the clipping was from an English paper who did the translating?

A. Dr. Darkow.

Q. And if the clipping was from a German paper who did the editing?

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A. Dr. Darkow.

Q. And the editing consisted of any markings that might be put on it to change it, did it, or headings, or anything of that

186 kind?

A. Yes, sir.

Q. If Dr. Darkow happened to be away you say you may have done some of that work?

A. Yes.

Q. Do you have any knowledge of any time during the period from June 15th to September 10th when you can definitely say he was away?

A. He was away every Saturday.

Q. When he was away every Saturday somebody else used to make up the daily despatches, so-called, for Sunday, did they not?

A. Yes, sir.

Q. Who did that?

A. Mr. Werner.

Q. What was the part which Mr. Werner, as a part of his employment, did in making up the paper daily and from day to day?

A. Writing editorials and preparing the Spazierganger, as we call it.

Q. What is the Spazierganger? It does not come into this case but just so the jury understands what your work was.

A. Well, it was more light reading.

Q. The Spazierganger is fairly translated as the Promenader, isn't it?

A. Promenader, Rambler.

Q. It is a column as to what a man sees as he goes about town?

A. Yes, sir.

Q. And the editorials?

A. And the editorials.

187 Q. Do you have personal knowledge of any editorial written by any one but Mr. Werner during that period?

Mr. Gray: That is objected to. You cannot fasten every editorial on a man by asking this man whether he knows of any that was not written by him.

Mr. Roberts: I think I have a right to know if he knows of any editorial written by anyone else during that time.

The Court: Yes. He stated what the ordinary work was. This question is in line with the other question, as to whether he knows of his own knowledge as to any days on which any one connected with the paper was not there.

Mr. Gray: He did not ask that.

Mr. Roberts: No; but I think I have a right to ask the other question.

The Court: I say it is in line with the same thought. It was asked as to one witness, whether he knew of his absence at any time. I think the other question may be asked, as part of his other answer, as to whether he knows.

Mr. Gray: Your Honor will grant an exception?

The Court: Yes. An exception will be noted for the defendants.

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(Exception noted for the defendants individually and jointly, by rection of the court.)

By Mr. Roberts:

Q. Do you know of any editorial not written by him in that period?
8 A. Not written by him?
Q. Written by anyone else?
A. No; I don't know.

By Mr. Gray:

Q. What is your answer?
A. I don't know. I don't know of any editorials that were writ-
n.
Q. You mean you don't know anything about it?

Mr. Roberts: He did not say that.
Mr. Gray: That was his manner, and I think his manner may be rly construed that way, and that is the reason I put that question. really don't know anything about it. Is that the answer?
Mr. Roberts: That is your testimony; not his. Mr. Gray, make ur objection.
Mr. Gray: If your Honor pleases, I am entitled to know what the ness meant by that answer.
The Court: Certainly you are.
Mr. Gray: That is all I wanted to know.
Mr. Roberts: I submit, if your Honor pleases, that the orderly y to get that out would be to cross-examine him about it.
The Court: I know, but counsel is entitled to understand the swers as they come out, because it may save cross-examination, or for any other reason. Just bring out clearly what he means.
Mr. Roberts: May I try to do it?
The Court: Certainly.

By Mr. Roberts:

Q. What I am trying to get at is, do you know of any case during period when anybody else contributed an editorial except Mr. rner?
A. No; I do not.
Q. Were you there every day during that summer, or did you ve a vacation?
A. Well, I had my regular day off.
Q. What was your regular day off?
A. Tuesday.
Q. You were regularly off on Tuesday? You were there from at hour to what hour on the days when you did work?
A. About four o'clock in the afternoon until about one and two ock in the morning.

CLOSE IN CENTER

Q. Was there a regular hour of the day when everybody reported?
A. No. They came in at irregular times.
Q. What time—I mean as a matter of habit—would Dr. Darkow come there?
A. About six o'clock.
Q. What time would Mr. Werner get in? Did he have any regular hour?
A. Oh, it was any time.
Q. But you were there from the start of the work until the paper went to press?
A. Yes.
190 Q. Where did the editors of the paper work?
A. Up on the second floor of 107 North 6th Street.
Q. Did they work out in the compositors' room?
A. No, sir.
Q. What part of the second floor?
A. The front part of the second floor.
Q. How was that divided from the compositors' room, where the Linotype machines were setting up type?
A. It was partitioned off.
Q. A wooden partition?
A. No. It was a regular—the walls were up.
Q. A plaster partition?
A. A plaster partition.
Q. And there was a door opening from that editorial room out into the compositors' room?
A. Yes, sir.
Q. I want to get a little bit of the local color as to the office. Who had desks in the office?
A. In the office?
Q. In the editorial office, yes; this editorial room.
A. Desks you ask?
Q. Desks or tables?
A. We had one table where I was sitting. We had a table where Mr. Werner was sitting. We had a table where Dr. Darkow was sitting.
Q. You had a table where you did your work?
A. Yes, sir.
191 Q. Werner had a table where he did his work?
A. Yes, sir.
Q. And Darkow had a table where he did his work?
A. Yes, sir.
Q. Who else did work in that room at any time during the period from June 15th to September 10th, while you were there?
A. Mr. Szepansky and Mr. Seiffert.
Q. We will take Mr. Seiffert first. When did Mr. Seiffert first come into the employ and in the work of the editorial room? You can possibly fix it conveniently by taking September 10th, the date that that warrant was served there. How long before that, approximately?
A. He was not very long there.

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. He was not very long there?
. No. Two weeks probably.
. Two or three weeks?
. Yes, sir.
. What work did Mr. Seiffert do there while he was there? What his part of the work?
. He was making local news also.
. He made local news?
. Yes, sir.
. Did he at any time according to your observation make anyg but local news?
. Not that I know of.

Q. When did Mr. Szepanscky come with the paper, to your best knowledge?

A. I think about—I am not sure. About June or July. ably earlier.
. Wasn't it earlier than that?
. Well, I couldn't say.
. It was before the 15th of June, at any rate, was it not?
. Oh, yes. He was there before that.
. What work did Mr. Szepanscky have to do there?
. He was City Editor.
. What does that comprise?
. Also making local news. Having charge of the local news.
. Did Mr. Szepanscky to your knowledge ever have anything to ith making the foreign despatches?
. Yes, sir.
. When?
. Usually on a Saturday, helping Mr. Werner.
. That was the day that Dr. Darkow was off?
. That is right, yes, sir.
. Except for that did he at any time have anything to do with

. No, sir. Not that I know of.
. During the period from June 15th to September 10th was e anyone to your knowledge, while you were there working, who editorial work or writing for the paper in the editorial room exthe persons you have named, namely, Werner, Darkow, yourself, Herbert, Szepanscky and Seiffert, for the time he was there?

A. Not that I know of.

Q. When matter was written for the paper how did it get print? Just describe the process?
. Well, it was taken out and laid on the shelf in the composing .
. Who took it out?
. Whoever made it. Everyone took out his own work.
. And it would be laid on this shelf in the composing room?
. Yes, sir.
. The shelf was just outside the office door?
. Right outside the door.

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Q. From there where was it taken, as a matter of every day practice?
A. The compositors took it away as they needed it.
Q. How was the paper set up in that office? By hand?
A. No. By Linotype machines.
Q. Where was the paper printed?
A. In the cellar.
Q. The printing presses were downstairs?
A. Yes, sir.
Q. Did you use a typewriter in your work?
A. Not at that time.
Q. Who did use typewriters?
A. Dr. Darkow and Mr. Szepansecky.
Q. Did they use the same kind of typewriters?
A. No, sir.
194 Q. The same make?
A. No, sir.
Q. Do you happen to remember which make either of them used?
A. I could not say that.
Q. They were not the same make, at any rate?
A. No; they were not the same make.
Q. You don't know what kind of make they were?
A. No; I don't know.
Q. When a clipping was cut from a German paper by Dr. Darkow what did he do with the clipping?
A. Pasted it on a piece of paper, our regular copy paper, and finished it up.
Q. Put a heading on it?
A. Put a heading on it.
Q. Then where was it sent?
A. Sent out to the compositors' room.
Q. I know of no way for the Government to get the facts that it has to have except to put you to some inconvenience with regard to particular articles. I show you what you have identified as the Philadelphia Sonnstageblatt of Sunday, June 24th, 1917, and call your attention to an article headed "The Crisis," on the first page and third column, and ask you if you prepared that article?

Mr. Gray? I do not know, if your Honor pleases, whether I could raise at this stage of Mr. Roberts' examination the question that I desire to raise, but I think I can. The witness is being shown
195 a paper that has been marked a certain number as a Government Exhibit. The question involves the introduction of that Exhibit into the case.
Mr. Roberts: No; it does not.
Mr. Gray: Yes; it does.
Mr. Roberts: I beg your pardon.
The Court: Not necessarily.
Mr. Roberts: I am not offering the paper.
Mr. Gray: No; he is not offering the paper, if your Honor please,

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hat is why I prefaced my objection with the remark that I

. Roberts: I will say to you, Mr. Gray, to save your time, that not going to ask him to say what is in this article at all.

. Gray: But my friend is going further than that. He is not g him what is in the article, but he is endeavoring to fix the nsibility for an article. His question was addressed to that . It goes even further, or at least goes on one line, while the line, of course, must be brought in to meet it. I propose to the question that these papers have not become competent evi—that these exhibits have not become competent evidence. I e that if the question that has been put brings that paper into se, that exhibit, it is my duty to raise the matter by objection I will submit to any suggestions your Honor may make, in order that I may just get the benefit of your ruling.

The Court: I suggest that you protect yourself by making the objection.

. Gray: I make it.

e Court: I will overrule the objection and allow you an exon, so that it cannot be said you did not make your objection ne.

. Gray: If it be a question of your Honor ruling against me beyou believe that the papers have become competent evidence, I want to state the reasons, but I believe there are other reasons ctuate your Honor at the present time.

e Court: I do not understand that I have reached that stage yet.

. Gray: No. I ask for the benefit of an exception, and that is will say now.

e Court: For all I know, it may have a bearing upon the ity of the articles themselves, and have a bearing upon their adbility, as well as any other possible bearing it may have.

. Gray: Your Honor will grant us an exception?

e Court: Yes.

xception noted for the defendants individually and jointly, by tion of the court.)

. Roberts: May it be stipulated on all of these papers that there be the same exception, so as to save Mr. Gray from objecting all me?

The Court: The notes of testimony may so show, that any other questions on this line are subject to the same objection, the same ruling, and the same exception.

By Mr. Roberts:

Did you prepare that article, headed "The Crisis"?

No, sir.

. Gray: That is changing the question entirely.

. Roberts: I do not think so. If it did, I would like to change k again.

. Gray: I think your original question was "who"?

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Mr. Roberts: No. It was whether he prepared it. You were under a misapprehension.

Mr. Gray: No; I am not under a misapprehension, because the question I imagine carries with it the use of the papers.

The Court: The objection applies the same way.

By Mr. Roberts:

Q. I show you Government's Exhibit No. 5, purporting to be the Philadelphia Tageblatt of Tuesday, July 10th, 1917, and call your attention to an article on page 3, column 3, headed "Bestätigt" "Confirmed" the English would be, wouldn't it?

A. Yes, sir.

Q. Did you prepare that article?

A. No, sir.

Q. I show you Government's Exhibit No. 10, purporting to be the Philadelphia Tageblatt of Friday, July 20th, 1917, and call your attention on page 1, column 5, which is headed "Drunter U. Druber."

Did you prepare that article?

198 A. No, sir.

Q. I call your attention to Government's Exhibit No. 1[illegible] purporting to be the Philadelphia Tageblatt of Wednesday, July 24th 1917, and call your attention to an article on page 4, column [illegible] headed "Was Wafhington hofft" Did you make that article?

A. I did not.

Q. I call your attention in the same exhibit, page 5, column [illegible] to an article headed "Servien." Did you prepare that article?

A. No, sir.

Q. I call your attention to Government's Exhibit No. 20, purporting to be the Philadelphia Tageblatt of Tuesday, August 14th, 191[illegible] and an article on page 5, column 3, headed "Ein Interim."

A. I did not make that.

Q. I call your attention to Government's Exhibit No. 24, being the Philadelphia Tageblatt of Thursday, August 16th, 1917, and call your attention to an article on page 1, column 2, which article is headed "Nichts Sicheres." Did you prepare that article?

A. No, sir.

Q. I call your attention to Government's Exhibit No. 28, being the Philadelphia Tageblatt for Wednesday, August 22nd, 1917, and point to page 5, column 2, where there is an article headed "Kreider Reichen." Did you prepare that article?

A. No, sir.

Q. I call your attention to Government's Exhibit No. 3[illegible]

199 which is the Philadelphia Tageblatt of Monday, September 3rd, 1917, and I call your attention to an article on page [illegible] column 4, headed "Meitere Sinfchränfungen." Was that prepared by you?

A. No, sir.

Q. I show you Government's Exhibit No. 38, being the issue of the Philadelphia Tageblatt of Tuesday, September 4th, 1917, and call your attention to an article appearing on page 1, column 6

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d "Sarrails Truppen geichlagen." Did you prepare that
?
No, sir.
I show you Government's Exhibit No. 43, being the Phila-
ia Tageblatt for Friday, September 7th, 1917, and point to an
there on page 1, column 1, headed "Fur porlitifche Re-
n." Did you prepare that article?
No, sir.
I show you an article on page 4, column 3, headed "Mas foll
Did you prepare that article?
No, sir.
I show you Government's Exhibit No. 52, being the Phila-
ia Tageblatt for Saturday, September 8th, 1917, and I show
n article on page 1, column 5, headed "Campfbereit." Did you
re that article?
No, sir.
Q. I show you Government's Exhibit No. 57, being the
Philadelphia Tageblatt for Wednesday, July 4th, 1917, and
on page 4, column 1, I show you an article headed "Zum
n Juli." What is that? Is that a news article?
No. That is an editorial.
Did you prepare it?
No, sir.
I show you Government's Exhibit No. 59, being the Phila-
ia Tageblatt for Monday, August 6th, 1917, and I show you
ge 4, column 4, an article headed "Yankee Bluff." Did you
re that article?
No, sir.
I show you Government's Exhibit No. 61, being the Phila-
ia Tageblatt for Saturday, the 7th of July, 1917, and I point
article on page 4, column 1, headed "Der Fechlichlag Re-
ung." That is what? An editorial?
That is an editorial.
Did you prepare it?
No, sir.
I show you Government's Exhibit No. 63, being the Phila-
ia Tageblatt for Monday, July 2nd, 1917, and show you an
on page 1, column 4, headed "Die Meisterschüken." Did you
re that article?

Gray: If your Honor pleases, I object to that question. My
is now going to certain articles which have not been set forth
indictment.

Mr. Roberts: This is one of the overt acts. The portion of
this article is an overt act charged in Count 9. It happens
to be the only overt act charged that is not also charged in
n the indictment before, where there are full copies of what
arge. That was an overt act in pursuance of the conspiracy.
ave got the date and the name of the article.

Gray: Count nine charges the commission of a conspiracy to
ree things, and then says: "And in order to effect the object of
id conspiracy, the defendants did thereafter, to wit, on July

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2nd, 1917, at Philadelphia aforesaid, cause to be printed and published an issue of the said 'Philadelphia Tageblatt,' containing an article entitled, 'Die Meisterschüken,' purporting to be a despatch from London dated July 1st."

The Court: I will overrule the objection and give the defendants an exception.

(Exception noted for the defendants individually and jointly, by direction of the court.)

By Mr. Roberts:

Q. Did you prepare that article?

A. No, sir.

Q. I now show you Government's Exhibit No. 71, being an issue of the Philadelphia Tageblatt of Friday, June 22nd, 1917, and call your attention to page 7, column 5, an article headed "Sie zutten dunkbor zein." That means "Be Thankful," doesn't it?

A. Yes, sir.

Q. Did you prepare that article?

202 Mr. Gray: That is objected to, if your Honor pleases. No where in the indictment is this mentioned.

Mr. Roberts: If your Honor pleases, I said in my opening to the jury that I intended to show certain other articles to rebut the idea of intent. I will not be able to show it without regard to these defendants unless I exclude every other person who could have written them. This is only preliminary proof at the best. It does not bear on the other question.

Mr. Gray: Preliminary it might be, but the question is whether it might be used at all, and I think in the way my friend offers it other specific articles not named in the indictment, no matter whether it is for the purpose of negativing intent or proving intent they are not admissible.

Mr. Roberts: I haven't offered anything yet.

Mr. Gray: No; but they are matters that may not be used. Even if it were made competent, as far as the matter of proof is concerned, then the question of whether these men wrote it or not is a totally immaterial matter.

Mr. Roberts: Of course, if we are to cross that bridge now we are ready to cross it, if Mr. Gray wants us to cross it now.

The Court: Dove-tailed in that proposition, I think this evidence would be admissible.

Mr. Gray: You see, if I waited until later and then this evidence was allowed to go in without objection it might strengthen my friend's right to offer his exhibits.

203 Mr. Roberts: I am not going to hold you down so close as that.

Mr. Gray: It is not a question of your holding me, Mr. Roberts.

Mr. Roberts: Or his Honor won't hold you so tight as that, either.

The Court: I think you are well within your rights, Mr. Gray, in making your objection now, so as to preserve your position.

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r. Roberts: I may say your Honor, that I expect to ask this wit- with regard to perhaps a dozen papers the same question. In r to save time may it be stipulated that the same objection Mr. y has made may have your Honor's same ruling?

r. Gray: I am very glad to have it made in that way, so as to time.

he Court: I think the record as yet does not show any ruling. objection is overruled and an exception noted for the defend- , and this same objection is to be considered as having been e and the same ruling made and the same exception allowed ie succeeding questions on the same line.

Exception noted for the defendants individually and jointly, by ction of the court.)

By Mr. Roberts:

. I show you Government's Exhibit No. 73, being the Philadelphia Sonnstageblatt of Sunday, July 15th, 1914, and I call your attention to an article on page 1, column 5, headed "Frieden." Did you prepare it?

. No, sir.

. I show you Government's Exhibit No. 75, being the Philaphia Tageblatt for Wednesday, July 18th, 1917, and I call your ntion therein to two articles, one on page 1, column 3, headed Klingt's recht," and another on page 7, column 3, headed lanz von 1916." Did you prepare either of these articles?

. I did not.

. I show you Government's Exhibit No. 78, being the Philaphia Sonnstageblatt for Sunday, July 22nd, 1917, and call your ntion to an article on page 7, column 3, headed "Roth heigt bie aille," or, at least, those are the first words of it. Did you pre- e that article?

. No, sir.

. I show you Government's Exhibit No. 80, being the Philaphia Tageblatt of Friday, August 3rd, 1917, and call your attenn to an article on page 4, column 1, and ask you whether that is ews article or not?

. It is an editorial.

. Did you prepare it?

. No, sir.

. It is called "Grau in Grau." Is that right?

. Yes, sir.

. I call your attention to Government's Exhibit No. 82, being the Philadelphia Tageblatt of Thursday, August 4th, 1917, to an article on page 4, column 1, headed "Endlich—frohe Botfchaften." Is that an article or an editorial?

. An editorial.

. Did you prepare it?

. No, sir.

. I show you Government's Exhibit No. 84, being the Philaphia Tageblatt of Wednesday, August 8th, 1917, and call your

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attention to an article on page 1, column 3, headed "Die Kriegsziele." Did you write that?

A. No, sir.

Q. Did you prepare it?

A. No, sir.

Q. I show you Government's Exhibit No. 86, being the Philadelphia Sonnstageblatt of Sunday, August 17th, 1917, and ask you with regard to the matter on page 7, column 3, under the general heading "Spazierganger," starting with the words "Mr. Elihu Root." Did you prepare that article?

A. No, sir.

206 Q. I show you Government Exhibit No. 9 and ask you what that is?

Mr. Gray: That is objected to. This will speak for itself if it becomes evidence.

Mr. Roberts: I withdraw the question.

By Mr. Roberts:

Q. I will ask you whose handwriting the word at the top in ink is.

Mr. Gray: Objected to until he shows this man is competent to so testify.

By Mr. Roberts:

Q. Do you know the handwriting at the top there?

A. I do know the handwriting.

Q. Then I ask you whose it is.

Mr. Gray: Well, if your Honor pleases, before he can testify that he knows that is the handwriting of a particular man that he has in mind, he must show how he knows it.

By Mr. Roberts:

Q. Have you seen the man whose handwriting you think that is write?

A. Yes, sir.

Q. How often?

A. Oh, off and on. He didn't write a whole lot.

Q. Off and on you have seen him write?

A. Yes.

By The Court:

Q. You have seen him write?

A. Yes.

207 By Mr. Roberts:

Q. Have you seen things come from his pen in the handwriting that you knew he had written?

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A. Yes, sir.
Q. I ask you in whose handwriting that is.
A. Dr. Darkow's.
Q. Now I show you Government Exhibit No. 32 which consists printed matter pasted on another sheet of paper and ask you if you now the handwriting of what is written in ink on that paper?
A. It is hard to say. I couldn't identify that.
Q. Now I show you "Government's Exhibit No. 37," being a sheet paper with some printed matter placed on it and some handwriting longside of the printed matter. Can you say whose handwriting at is in?
A. Dr. Darkow's handwriting.
Q. Now I show you "Government's" Exhibit No. 42, being a simir sheet with some pen written matter upon it. Can you tell me hose handwriting the pen writing is in?
A. That looks like Dr. Darkow's handwriting too.
Q. Now I show you "Government's Exhibit No. 51," being the me sort of a paper, printed matter with some written matter alongde of it, and I ask you now with regard to the pen written matter, ecause there is some pencil writing on it, I ask you whose handriting that is, the pen writing, if you know?
A. This looks like Darkow's.
Q. Now, I ask you in regard to "Government's Exhibit No. 56," which is likewise printed matter pasted on a sheet of paper 08 with some pen written matter on it, who wrote on that pen handwriting to the best of your knowledge and belief?
A. That also looks like Dr. Darkow's handwriting.
Q. Just let me ask you about one exhibit here. I now show you Government's Exhibit No. 47," which appears to be a slip of German printed paper pasted on a larger slip of brown paper. Did ou prepare that matter?
A. No, sir.
Q. You did not?
A. No, sir.
Q. And there are pen lines drawn through matter. Is that your ork?
A. No, sir.
Q. You spoke a bit ago about how the matter was prepared for e press. You said, I think, as to the German papers the pieces of erman matter would be clipped out of a paper from the local hiladelphia paper or the "Statts Zeitung" and pasted on a copy ip?
A. Yes, sir.
Q. I am not asking you if these are the actual copy slips, but are ese the kind of slips on which it was done?
A. Yes, sir.
Q. Those are characteristic of the slips that were used?
A. Yes, sir.
Q. Now I pick up at randum some of these white and yellow eets that are here and ask you whose handwriting that is, if you now.

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209 Mr. Gray: If your Honor pleases, I must object. I don't know what these may be.

Mr. Roberts: Nobody else can tell.

Mr. Gray: Well, if we have something here that is of no moment in this case, what is the use of having it identified. I object to it as totally irrelevant and immaterial.

The Court: The trouble of it is that we started at this end.

Mr. Gray: I know, but my friend has the burden of laying the ground for this proof.

The Court: He must begin at one end or the other.

Mr. Gray: He says he is showing the witness some lists of paper picked up at random.

Mr. Roberts: I will ask that the papers be marked, "Government's Exhibit No. 88."

The Court: The objection is overruled. Exception is noted for the defendants individually and jointly by direction of the court.

By Mr. Roberts:

Q. Whose handwriting is that?

A. That is Mr. Werner's.

Q. Now, Mr. Herbert, during the period from June 15th to September 10th, 1917, was the Philadelphia Tageblatt and Sonntagsblatt a subscriber to any news service, any cable service?

A. No, sir.

Q. Was it a member of the Associated Press?

210 A. No, sir.

Q. Did it receive dispatches from the International News Service, I mean directly?

A. Yes, we did.

Q. Where from?

A. Well, I don't know if it was just at that time. The National News Service we tried for a short while.

Q. You cannot be certain whether it was in that period or not?

A. Couldn't say.

Q. Did you receive any news by mail?

A. Not that I knew of.

Q. How many issues a day did you have?

A. One.

Q. What time was that ready for the press?

A. About a quarter to one.

Q. In the morning?

A. In the morning.

Mr. Gray: By in the morning, he means 12.45 A. M.?

The Witness: Yes.

By Mr. Roberts:

Q. During the night?

A. Yes.

Q. You know how this paper was distributed, of your own knowledge?

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A. Through carriers.
Q. Through carriers?
A. Yes, and through the mail.
Q. Do you know of your own knowledge what its circulation was?
A. I do not.
Q. Whom, if anyone, have you heard giving the compositors ders what to do in and about the place?
A. Why, every one of the editors.

Cross-examination.

By Mr. Gray:

Q. For how long have you been connected with the Philadelphia geblatt and Sonntagsblatt?
A. 11 years.
Q. You went with them in what year?
A. 1907.
Q. Are you with them yet?
A. Yes, sir.
Q. You are with them now?
A. No, not at the present time. I worked with them until the ginning of last week.
Q. And for how long before June of 1917 were you one of the itors
A. About 2 years, I think.
Q. It was a paper in which, irrespective of what the particular rk of a particular editor was, you generally helped each other t with your work. That is true, isn't it?
A. Yes, sir.
Q. And for how long had the Philadelphia Tageblatt been in istence, do you know, prior to 1917?
A. I believe it is now 40 years.

Mr. Roberts: If you know.

By Mr. Gray:

Q. And during the time that you were with it, it was a paper that ver had the slightest difficulty with any of the authorities. That rue, isn't it
A. Never had any.
Q. Never had any trouble?
A. No.
Q. And there was published in the City of Philadelphia, maybe w, for all I know, one other German newspaper called the Philaphia Demokrat. That is true, isn't it?
A. Yes, sir.
Q. That is still published, or do you know?
A. Not now.

Q. They were the two rival German sheets in the City of Ph
delphia, were they not?
A. Yes, sir.
Q. And the only two?
A. No, there was another morning paper called the Philadelp
Gazette.
Q. Published for how long?
A. I don't know how long.
Q. The Gazette and the Demokrat are published by the s
people?
A. Yes, sure.
Q. The Gazette and the Demokrat are published by the s
people and then there was your paper?
213 A. Yes, sir.
Q. The Philadelphia Tageblatt—and when I say the P
adelphia Tageblatt I mean my question to include the Sonnt
blatt, the Sunday paper, and I won't use both names—is owned b
corporation, is it not?
A. Yes, sir.
Q. Were you a stockholder in it?
A. No, sir.
Q. You were simply a salaried employe?
A. Yes, sir.
Q. Do you know anything about the corporation or its affa
A. Nothing at all.
Q. The character of the corporation or the amount of stock
the par of the stock or anything of that kind?
A. I have no idea.
Q. You have no knowledge of that at all?
A. No, sir.
Q. Do you know how long it has been run by a corporation?

Mr. Roberts: Now, your Honor, I feel that I must object. T
is not cross-examination.
The Court: Well, it all has a possible bearing, I suppose.
won't exclude it.

By Mr. Gray:

Q. How long has it been run as a corporation?
A. I don't know.
Q. Was it before the time you were employed with the paper?
A. Yes, sir.
Q. So it was prior to the time that you came with the p
214 in 1907?
A. Yes, sir.
Q. How long had Dr. Darkow been connected with the paper,
you know?
A. I couldn't tell exactly.
Q. Was he there before you?
A. Yes, sir.

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Q. And how long had Mr. Werner been connected with the paper, if you know?
A. I don't know exactly.
Q. Was he there before you?
A. Yes, sir.
Q. Now Mr. Lemke was the business manager of the paper, was he not?
A. Yes, sir.
Q. He had absolutely nothing to do with the publication of the paper himself, did he?

Mr. Roberts: If you know.

The Witness: No, sir, not that I know.

By Mr. Gray:

Q. And it is a fact, isn't it, that he had nothing to do with the writing of the articles?
A. Nothing.
Q. Or the printing of the paper or the getting up of the forms or anything of that kind?
A. Nothing in that line.
Q. All he had to do was the management of the business end of it, such as paying the bills, keeping the books, paying the
215 salaries and collecting the money that was due to the paper. That is true, isn't it?
A. That is correct.
Q. He was there, I suppose, every day?
A. To the best of my knowledge. Maybe not there on Sunday.
Q. And he was there during the day hours, was he not?
A. Yes, sir.
Q. Do you know what hours?
A. He was there usually in the afternoon until late at night.
Q. How late at night?
A. No regular time, 7 or 8 or 9 o'clock, or 10 o'clock, or maybe 11 o'clock.
Q. And Mr. Darkow's hours, you say he got in about 6 o'clock?
A. About 6 o'clock.
Q. Werner came in at any time?
A. Any time.
Q. And during the period of time from June 15th until September 10th, 1917, do you know whether Mr. Werner was away on a vacation for any extended period of time?
A. Well, he was away.
Q. For how long? Two weeks, wasn't it?
A. I believe so. I couldn't say for sure.
Q. And was Dr. Darkow away on a vacation for any extended time?
A. Yes, sir.
Q. Two weeks, wasn't it?
A. I guess so. I am not sure.

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216 Q. Well, is that your best recollection, that it was about two weeks?

A. Yes, that is to the best of my recollection.

Q. Then you said that besides Dr. Darkow and Mr. Werner there was yourself and Mr. Seiffert and Mr. Szepanscky who were editors?

A. Yes, sir.

Q. Was there any one else?

A. No, sir.

Q. You had a man named Bruechig?

A. Yes, but I don't think he was there at that time.

Q. When did he stop working for the paper?

A. I couldn't tell.

Q. Do you know a man named Seidel?

A. Yes, sir.

Q. Wasn't he an editor also?

A. Yes, he was an editor.

Q. Wasn't he there during the summer?

A. I don't know. I don't think so. I am not sure of that.

Q. You are not sure?

A. No. He was there with us but I couldn't tell what time.

Q. You have answered with reference to certain exhibits that have been shown to you that you didn't write them. I want to ask you a general question. Do you know that Szepanscky wrote some of them?

A. I do not know.

Q. You don't know that?

A. No, sir.

217 Q. Now then, let me ask you about the other two defendants. Did you ever see Mr. Vogel there?

A. At the Tageblatt, you mean?

Q. Yes.

A. Never.

Q. He had absolutely nothing to do with either the business of it or the newspaper end of it, did he?

A. Not to my knowledge.

Q. What was his position?

A. He was secretary of the society.

Q. Secretary of the corporation that owned the paper?

A. Yes.

Q. And he never had anything to do with the paper itself, or didn't know from day to day what was going on down there, did he?

Mr. Roberts: I object to that. How can this witness know what Mr. Vogel had in his mind.

The Court: He can be asked the question as to whether or not to his knowledge Vogel had anything to do with the work of the office in any way, and the issuing of the paper.

Mr. Gray: Well, he has said that he did not. I think that is covered.

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By Mr. Gray:

. With reference to Mr. Schaefer, did you ever see him down e?

. Never.

. And what was his position, if you know?

A. President of the society.

Q. And had he anything to do with reference to the business end or publishing end of the paper?

r. Roberts: If you know of your own knowledge.

he Witness: No, sir.

r. Gray: Mr. Roberts has produced this witness as the man who vs what is going on down there. That is the reason I am asking

By Mr. Gray:

Now, do you know the name of the corporation that owned paper?

The Philadelphia Publishing Association.

In publishing news articles, Mr. Herbert, all newspapers create own headlines, do they not?

Yes, sir.

So that if an article is taken because of the necessarily limited that an association or a newspaper like this had to draw from, article is taken from another paper, the headline that is put it when it appears in your paper is the headline of your own ion?

Yes, sir.

Whether the local news, foreign news, or whatever it may be?

Yes, sir.

Now, was there any one else connected with the newspaper that ny translating?

Did any translating?

Who did the translating during the period, and all my questions are addressed to the period between June 15th and September 10th, 1917, who did the translating of the articles from English into German?

Well, everyone of us.

Do you happen to know what Mr. Werner's salary was there?

I have no idea.

Do you know what Mr. Darkow's salary was?

No, not true.

Do you know whether either one of them had any interests in aper aside from their salaries?

I do believe Mr. Werner had.

You believe Mr. Werner had?

Yes.

As a stockholder in the corporation?

OSE IN CENTER

A. I do believe he was a stockholder, but I am not sure ab
that.

Q. I think you said that not only did you do translating, but
all made your own headlines?

A. Yes, sir.

Q. And that when articles came from the editorial room, t
were laid on the shelf outside for the compositiors to get?

A. Yes, sir.

Q. Now didn't your organization get certain news also from
other syndicate that has not been mentioned by Mr. Roberts?

A. Yes. This was syndicate matter, plate matter.

Q. Who furnished you with that?

A. I don't know what their name was.

Q. Well, there was some of that news furnished you already
up in stereotype form, wasn't there?

220 A. Yes, sir.

Q. That is to say not only set up but on plates and
took it and put it in your paper after you got it, headings and

A. Yes, sir.

Q. And it was furnished other papers besides yourself?

A. Yes, sir.

Redirect examination.

By Mr. Roberts:

Q. Syndicate matter that has been spoken of, that was not stri
news, was it?

A. No, you couldn't call it correctly news, but sometimes th
were news items in between it.

Q. Now you said that each one of you did translating?

A. Yes, sir.

Q. By that do you mean that you did translating on the ot
man's job?

A. No, each man translated his own.

Q. That is, for instance, you did the translating for the l
news?

A. Yes.

Q. And if Dr. Darkow needed some translating, he did it?

A. Yes, but I said that once in a while if he was overburde
with work, we might help him.

Q. Then he would write the article and head it and fix it up?

A. Yes. He would say, "Make this without a headline,"
so on.

Q. To your knowledge, when Mr. Werner was away, who w
the editorials?

221 A. I have no idea.

Q. Now, have you knowledge about that?

A. I couldn't say. I couldn't say who wrote the editorials. U
ally Mr. Werner prepared those before he went.

Q. That is what I wanted to know. When Mr. Werner w
away he usually prepared them before he left?

COPY BOUND

A. Usually.
Q. During the time Dr. Darkow was away, who handled the foreign news?
A. Mr. Werner.

The Court: Has the interval of the issues of this paper appeared in the testimony or not?
Mr. Roberts: Yes. Mr. Herbert testified that the issue of this paper was every day from June 15th to September 10th.

The Court: And the Sunday edition?
Mr. Roberts: Yes and he has identified all these papers as being papers in that period.

Recross-examination.

By Mr. Gray:

Q. And which articles you may have translated or which any of the others may have translated when you were helping Mr. Darkow or Mr. Werner, you cannot today say, can you?
A. No, sir.
Q. You couldn't point them out?
A. No, sir.

222 Re-redirect examination.

By Mr. Roberts:

Q. Do you know what this corporation is composed of that Mr. Gray was asking you about that owns this newspaper?
A. What is it composed of?
Q. Who owns the stock of this corporation, as I understand it, that he is asking about?
A. A whole lot of men, as far as I know.

Mr. Gray (at side bar): I desire to call the Court's attention to the fact that this is a case that has aroused quite some public interest and I feel that it is a case in which the jury should not be permitted to separate while they are actually engaged in the trial of the case, because of the great prejudice that exists by reason of national conditions and the probability of their being influenced to some extent in their actions in the way of prejudice to the defendants.
Mr. Roberts: That is objected to.

Motion overruled. Exception noted for the defendants individually and jointly by direction of the court.

The Court: Gentlemen of the jury, I had in mind to say to you, and was about to say it, this, that I desire to call your attention to something that I have no doubt already occurred to each one of you. The case that you are trying is one which very naturally will arouse the interest of a great many people, and just as naturally be a temptation for some of them to talk to you. I don't mean this in

CLOSE IN CENTER

223 the way of admonition, because I know that none of you would permit any one to speak to him, but in order to supply you with a good answer to any one who should thoughtlessly or otherwise approach you, I take the responsibility of instructing you not to hold conversation with any one on any matter connected with the issues that are now in hearing before you, so that if any one thoughtlessly, as I have said, or otherwise, does approach you on the subject you have a good answer to give them, that you have received instructions from the court not to discuss the question and in that way you can dispose of what might otherwise be an embarrassing thing to get rid of, and you can dismiss them with the dismissal coming from the court instead of from yourselves, and I ask that each one of you bear that in mind. You are now relieved until to-morrow morning at 10 o'clock. Of course, you understand that that is largely a matter for your own convenience. Otherwise you would have to be kept together until this case is disposed of.

At 4 o'clock P. M., court adjourned until 10 o'clock A. M., September 24, 1918.

224 Second Day.

UNITED STATES

vs.

SCHAEFER et al.

Philadelphia, Pa.,

Tuesday, September 24, 1918—10 A. M.

Present: Parties as before noted.

Col. CHARLES A. P. HATFIELD, having been duly sworn, was examined and testified as follows:

By Mr. Roberts:

Q. What is your official position in the United States Army, sir?

A. I am Colonel of the United States Army, retired. At present on active duty, and have been for more than a year and a half United States Army Recruiting Officer in Philadelphia.

Q. In the period from June 15, to September 10, of last year, 1917, were you the United States Army Recruiting Officer in Philadelphia and vicinity?

A. Yes. I had charge of the United States Army Recruiting.

Q. Was the United States Army between June 15, and September 10, 1917 engaged in recruiting and enlisting men in the United States Army?

A. Yes, sir.

Q. Volunteers?

A. Volunteers, yes sir.

225 Q. In this city and vicinity?

COPY BOUND CL

In this city and four adjoining counties, yes.
To your personal knowledge and under your supervision and
ion?
Under my supervision, and I was in charge of recruiting.
o cross-examination.)

NOLD SEYDEL, having been duly sworn, was examined and testi-
s follows:

By Mr. Roberts:

Where do you reside?
Merchantville, New Jersey. That is the Post Office.
What is your business?
Building.
Building business?
Yes.
Were you ever in the employ of the Philadelphia Tageblatt
shing Association?
For a few weeks.
Mr. Seydel, when did you first come into the employ of the
lelphia Tageblatt Publishing Association,—the date?
(The witness refers to a paper). I will have to look that over.
All right. If you have to look at a memorandum to refresh
nemory, you may do so.
In June.
Q. What date? Keep your voice up. This room is a very
hard room to hear in.
A. I wish I had last year's calendar. Then I could tell
xactly.
Last year's calendar?
Yes.

Gray: What does he want to know? We can tell him.
Roberts: Have you got last year's calendar?
Gray: Just wait until I find where the calendar is. No, this
year's.
Roberts: That is what I thought you would have,—this year's.
Gray: I usually carry a perpetual calendar. What does he
to know? We can tell him. Use the 1918 calendar. All
ave to do is to put it a day back.
Witness: Of course, I would like to be sure in making my
ent. The week, that June 22nd fell in, that is Friday.

By Mr. Roberts:

The Friday that fell in the week of June 22nd?
Yes, sir, and Tuesday of the same week I started.
Tuesday of the same week you started?
Yes, sir.
Wait a minute. You were there on Tuesday before the 22nd
e, and Friday, the 22nd of June?

SE IN CENTER

A. Yes, sir.
Q. That week?
227 A. That week.
Q. You were there the two days of that week?
A. Yes.
Q. What did you do that week?
A. Translation, local news.
Q. Translation of local news?
A. Yes, sir.
Q. Did you translate any foreign news?
A. No, sir.
Q. And by "foreign news" I mean news purporting to origi
outside of the City of Philadelphia?
A. No, sir.
Q. Did you write any editorials?
A. No, sir.
Q. When were you employed there again?
A. July 13, Friday, again, Tuesday and Friday in the same
I worked again there.
Q. Tuesday and Friday in the same week you worked again?
A. Yes.
Q. What work did you do those two days?
A. Translation.
Q. Of what kind of news?
A. Local news.
Q. And by "local news" do you mean Philadelphia and vicin
A. Philadelphia and vicinity.
Q. Philadelphia and vicinity?
A. Yes.
228 Q. Any outside news?
A. No, sir.
Q. Washington or foreign or political news?
A. No, sir.
Q. Any editorial work?
A. No, sir.
Q. Where did you do what work you did? In what room?
A. Second floor.
Q. On the second floor?
A. Yes, sir.
Q. What is there there?
A. The editorial department, and printing.
Q. The editorial department and printing?
A. Yes.
Q. Did you work out where the Linotype machines are, or in
small room?
A. In the small room.
Q. In the small room?
A. Yes.
Q. Then, when again were you employed at the Tageblatt?
A. The next day was Saturday. I started in as bookkeeper.
Q. As bookkeeper?

COPY BOUND

A. Yes.
Q. Where did you work when you worked as bookkeeper?
A. In the first floor.
Q. On the first floor?
A. Yes, sir.
Q. And from that next Saturday, when you started as bookkeeper, down to and including September 10, did you do any editorial work?
A. About three nights.
Q. Three nights?
A. A couple of hours.
Q. A couple of hours?
A. Yes.
Q. And what work did you do on those three nights?
A. Local news.
Q. Anything else?
A. No, sir.
Q. None outside of Philadelphia news?
A. No, sir.
Q. No editorials?
A. No, sir.
Q. And all the balance of the time do I understand you worked as bookkeeper?
A. Yes.
Q. Were you there on September 10, at the time this warrant was served and the seizure was made?
A. No, sir.
Q. When did you leave?
A. I left Friday. I guess Mr. Lemke would be able to show by the books. I left Friday.
Q. The Friday previous to that?
A. Mr. Lemke——
Q. You cannot ask him about that. We will have to get your recollection about it. I show you Government Exhibits Nos. 1, 6, 10, 14, 20, 24, 28, 33, 38, 43, 52, 57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 78, 80, 82, 84, and 86, and ask you what they are?
A. What do you mean?
Q. What is that? What have you got in your hand?
A. That is a newspaper.
Q. What newspaper?
A. A German newspaper.
Q. What German newspaper?
A. A German newspaper.
Q. What one?
A. The Philadelphia Tageblatt.
Q. The one you hold in your hand now?
A. That is the Sonnstageblatt, the Sunday edition.
Q. That is the Sunday edition?
A. Yes.
Q. Is there any doubt about that being the paper?
A. No, sir, no doubt.

CLOSE IN CENTER

Q. What about all the rest?
A. All the same.
Q. All the same?
A. Yes.
Q. No doubt about that?
A. No, sir.
231 Q. I show you Government's Exhibit No. 9, which see to be a sheet of paper with German printing on it, and I e your attention to a word, pen written, at the top.
A. Yes.
Q. In whose handwriting is that?

Mr. Gray: That is objected to until you lay the ground.

(Question withdrawn.)

By Mr. Roberts:

Q. Did you ever see the man write whose writing you recogn that as being?
A. Yes.
Q. You have seen the writing of that man from his hand?
A. Yes.
Q. More than once?
A. More than once.
Q. You know his handwriting?
A. Yes.
Q. Whose handwriting is that?
A. Dr. Darkow's.
Q. Dr. Darkow's?
A. Yes.
Q. I show you Government's Exhibit No. 32, which appears to some sort of a German type article pasted on a sheet of paper, and show you a certain pen writing on that slip. There are two word
A. I recognize this as Dr. Darkow's.
232 Q. Pointing to the lower one?
A. Yes, but I don't know whose that is.

Mr. Gray: I do not believe these gentlemen of the jury can h you.
Mr. Roberts: He said, "I recognize this as Dr. Darkow's," pointi to the lower one, "but I don't know that one," pointing to the wo "riots."

By Mr. Roberts:

Q. I show you Government's Exhibit No. 37, being a similar she and ask you in whose hand the pen writing on that sheet is?
A. Dr. Darkow's.
Q. I show you Government's Exhibit No. 42, which is a simil sheet, with a pen written word at the top. In whose handwriti is the pen writing?
A. Dr. Darkow's.

COPY BOUND

Q. I show you Government's Exhibit No. 51, which contains also
n writing on a slip on which is pasted some German printed mat-
r. In whose handwriting is the pen writing there,—those two
rds?
A. I am not sure to say that.
Q. You are not sure?
A. No, sir.
Q. I show you another exhibit, No. 56, which is a similar slip, and
hich has pen writing at the top. In whose handwriting is that?
A. That is Dr. Darkow's.
Q. That is Dr. Darkow's?
A. Yes, sir.

Mr. Roberts: I will ask the stenographer to mark the book, which
produce, called "Order Book" on the outside as "Government's Ex-
bit No. 89."

(The stenographer marked the book just referred to by Mr. Rob-
ts as "Government's Exhibit No. 89, T. R. P.")

Mr. Gray: Let me see it.
Mr. Roberts: Certainly.

(Book marked "Government's Exhibit No. 89, T. R. P.," handed
r. Gray.)

Mr. Roberts: I will also ask the stenographer to mark a paper,
hich purports to be a receipt, which I produce, as "Government's
xhibit No. 90."

(Paper just referred to by Mr. Roberts marked "Government's Ex-
bit No. 90, T. R. P.")

By Mr. Roberts:

Q. Referring to Government's Exhibit No. 89, this book, have you
er seen that book before?
A. Yes.
Q. Where did you see it?
A. In the office of the Philadelphia Tageblatt, bookkeeping de-
rtment.
Q. In the office of the Philadelphia Tageblatt, bookkeeping de-
rtment?
A. Yes.
Q. I refer you to pages 130 and 131 in that book where there ap-
pears certain matter in writing, in longhand?
A. Yes.
Q. In whose handwriting is that matter?
A. Mr. Lemke's.
Q. That refers to both pages?
A. Yes, sir, to both pages.
Q. Thank you. Which Mr. Lemke is that?
A. The manager.
Q. The manager?

CLOSE IN CENTER

A. Yes, sir.
Q. Where does he sit here?
A. Right there (indicating).
Q. The gentleman with the gray mustache?
A. Yes.

Mr. Gray: There is no question about the identification of th man.
Mr. Roberts: There are three Lemkes. That is the only reason
Mr. Gray: I did not know that.
Mr. Roberts: Yes. There was a compositor named Lemke, an one other man named Lemke.

By Mr. Roberts:

Q. I show you Government's Exhibit No. 90, and ask you i whose handwriting that receipt is?
A. Mr. Vogel's.
Q. Mr. Vogel's handwriting?
A. Yes, sir.

235 Cross-examined.

By Mr. Gray:

Q. Mr. Seydel, with reference to the times when you were em ployed editorially upon this paper, how is it you can say so definitel to-day as to the character of the work that you did during the tim you were there in the summer of 1917?
A. Why, because I was interested in it, and I know pretty wel what I am doing.

By Mr. Rogers:

Q. Look out this way a little bit when you speak, because som of the jurors cannot hear you. Speak out loud.
A. I know pretty near in the last two years what I was doing.

By Mr. Gray:

Q. I know, but when you were connected with the Tageblatt yo helped each other with your work, didn't you?
A. Yes.
Q. You did all character of work while you were there, didn' you?
A. Yes, because that is the way I was employed.
Q. You wrote editorials occasionally?
A. No, sir, no editorials.
Q. None at all?
A. No, sir.
Q. Did not you translate any news that was given to you to trans late?
A. Yes, local news.

COPY BOUND

Q. But any kind of news that was given to you to translate
6 you translated it, didn't you?
A. Yes, but I had no other news to translate than local
ws.
Q. How do you recollect so distinctly to-day that you did not
[illegible] any foreign news?
A. Because I was interested in it and I have followed the case
the Tageblatt.
Q. I am not so much particularly interested myself in whether
u were interested in it and whether you followed the case of the
geblatt, but I want to know how it is to-day, somewhat over a year
er, you can clearly recollect that you translated no foreign news?
A. Because I must be a dummy if I would not know that.
Q. Because you would be a dummy if you would not know that?
A. Yes.
Q. Did you make a memorandum?
A. No, sir.
Q. Of every article you were given to translate?
A. No, sir.
Q. It is not, then, because you did not want to be involved in any
re of the responsibility for translating foreign news that you say
t?
A. No, because I had no chance. I had no chance to translate it.
. Darkow had the foreign news. He was the managing editor.
Q. You helped him occasionally?
A. Not Mr. Darkow. I had nothing to do with his business.
Q. He never gave you anything and asked you to translate it for
him?
7 A. He gave me one time local news.
Q. But you say he had nothing to do with the local news?
A. Mr. Szepansecky was out that day. Somebody had to take
. Szepansecky's place. He was the editor of the City Department,
. Szepansecky, and he was sick that day on what you call,—some
d of a sickness, and Mr. Darkow did the clipping. Therefore, he
ned it over to me for translation.
Q. And you are ready to say, however, though you did help Dr.
rkow, you never at any time translated anything but local news?
A. Local news.
Q. What do you do now for a living?
A. I am in a building plant. I work for the Government.
Q. You work for the Government now?
A. Yes, sir.

Redirect examination.

By Mr. Roberts:

Q. Are you an American citizen?
A. Yes.
Q. How long have you been an American citizen?
A. Since 1910.
Q. Where were you educated?

LOSE IN CENTER

A. I was educated in Germany.
Q. In Germany?
A. Yes.
Q. Have you ever gone to any American Institution of le
ing?
238 A. Yes. Harvard.
Q. You have been to Harvard College?
A. Yes, sir.

Recross-examination.

By Mr. Gray:

Q. Where were you born?
A. Germany.

By Mr. Roberts:

Q. By the way,—just one other question. When were you
subpœnaed in this case?
A. To-day.
Q. Last night, was it not?
A. Yes, last night.

ROBERT SZEPANSCKY, having been duly sworn, was examined
testified as follows:

By Mr. Roberts:

Q. You were born, I think, in Doylestown, Pennsylvania?
A. Yes, sir.
Q. Subsequently you went to Germany to visit some relatives?
A. Yes.
Q. And you were educated there?
A. Yes.
Q. Then you came back to this county?
A. Yes.
Q. You are an American citizen?
A. Yes, sir.
239 Q. When did you first enter the employ of the Philadel
Tageblatt Publishing Association?
A. Around April, 1917.
Q. Around April, 1917?
A. Yes, sir.
Q. When you were there, in what capacity did you go there?
A. I was employed as City editor.
Q. City editor?
A. Yes, sir.
Q. As such City editor did you have anything to do with
writing of editorials?
A. No.
Q. Did you ever write an editorial for the Tageblatt while
were with them?

COPY BOUND

A. No, sir.
Q. Then, when you went there, who was the chief editor?
A. Mr. Werner.
Q. And who was the managing editor?
A. Dr. Darkow.
Q. Tell me where the editorial work of the Tageblatt was done, Mr. Szepanscky, during the period from June 15 to September 10?
A. Werner generally made the editorials, and Dr. Darkow had charge of the foreign news, and I had charge of the local news.
Q. What did Mr. Herbert do?
A. Mr. Herbert generally covered the society news.
Q. What do you mean by "society news"?
A. He went around to these different clubs to cover whatever they had.
Q. When did Mr. Seiffert come with the Tageblatt, I mean approximately?
A. Around August.
Q. Around August?
A. Yes.
Q. And was there a man named Brüchig there?
A. Yes, sir.
Q. Was he there on June 15, or thereafter?
A. No.
Q. Before that time?
A. Before that time?
Q. Tell me where in the building the editorial work was done?
A. On the second floor.
Q. What part of the second floor?
A. It was a room partitioned off.
Q. A room partitioned off?
A. Yes.
Q. Who worked in that second floor room which was partitioned off, that is, the editorial room?
A. Mr. Werner, Dr. Darkow and I and Mr. Herbert. Mr. Seiffert.
Q. And Mr. Seiffert, after he came?
A. Yes, sir.
Q. Just about your work. What work did you do in preparing articles for the paper?
A. Local news.
Q. Where did you get the local news?
A. From the Philadelphia evening papers.
Q. Was your paper an evening or morning paper?
A. Morning paper.
Q. From the Philadelphia English or German papers?
A. Mostly English. Sometimes something out of the Demokrat. Very little.
Q. Your business was to do what with that?
A. Translate it, make it up.
Q. Did you use a typewriter?
A. Yes.

CLOSE IN CENTER

Q. What make of a typewriter did you use?
A. I don't know exactly. "Victoria," or something like that.
Q. "Victoria" or "Victor"?
A. "Victor," something like that.
Q. Who else used a typewriter there?
A. Dr. Darkow.
Q. What kind of a typewriter did he use?
A. Smith-Premier.
Q. Did anybody else use a typewriter there?
A. No.
Q. Nobody but you two?
A. No, sir.
Q. Who edited the column that was called the Spazierganger?
A. It was made up of articles that were sent to the Tageblat mostly, and Mr. Werner put them together, and gave them out t be printed.
Q. Mr. Werner put them together and gave them out to b printed?
242 A. Yes.
Q. How often did that column appear? Every day?
A. No.
Q. Who gave you your instructions concerning your duties whe you were first employed there?
A. Mr. Werner told me what I had to do.
Q. Now, during this period from June 15 to September 10, wa there any special day when either Mr. Werner or Dr. Darkow woul not be there, or wasn't there?
A. They had their regular days off.
Q. What were their regular days off?
A. Mr. Werner was off on Sundays and Dr. Darkow on Satur days.
Q. When Dr. Darkow was off on Saturday, who prepared th foreign news?
A. I did.
Q. You did?
A. Yes.
Q. When Mr. Werner was off on Sunday, who wrote the editorials
A. Mr. Werner generally prepared one.
Q. Prepared one and left it there?
A. Yes, sir.
Q. When either Mr. Werner or Dr. Darkow was off either fo sickness or vacation,—were they off during that period from Jun 15 to September 10 for any length of time?
A. Mr. Darkow was off sometime on a vacation.
Q. And was Mr. Werner off at any time?
243 A. I believe he was off a couple of days, too.
Q. You do?
A. Yes.
Q. Who wrote the editorials when Mr. Werner was off at that time? Did you?

COPY BOUND C

A. No.
Q. Do you know who wrote them?
A. No, I don't know who wrote them.
Q. In that period?
A. Yes.
Q. When Dr. Darkow was away, who prepared the foreign news?
A. I did.
Q. Did Mr. Werner have anything to do with that?
A. Well, he helped me, you might say.
Q. He helped you, you might say?
A. Yes, he took part of it over himself.
Q. When Dr. Darkow was there who prepared the war news and political news?
A. Dr. Darkow.
Q. And when you speak of "foreign news" as compared with cal news," what do you mean? Do you mean only news from the er side of the water?
A. No, what came from the United States, too, outside of Philaphia.
Q. Outside of Philadelphia?
A. Yes.
Q. Then, did the paper, while you were with it, have any cable service?
A. No.
Q. Associated Press, or International News Service?
A. No, sir.
Q. And where was the foreign news taken from?
A. Other papers.
Q. What other papers?
A. We had papers from quite a lot of other towns, German papers l English papers.
Q. German papers and English papers?
A. Yes. We had the Staats Zeitung, the Herald, and the English ning papers, and the Demokrat of Philadelphia.
Q. If the news was in English, it would be translated?
A. Yes.
Q. And if it was from a German paper, what was done with it?
A. It was generally used the way it was, sometimes it was shortd, or something added to it.
Q. I think you said on Saturdays when Dr. Darkow was away, you Mr. Werner, or you with Mr. Werner helped to prepare the eign articles?
A. Yes, sir.
Q. Did Mr. Herbert at any time help with the foreign news?
A. The time Mr. Darkow was on his vacation.
Q. At any other time?
A. Not that I know of.
Q. Not that you know of?
A. No.
Q. Did you get any news at that time at the Tageblatt by mail vice? Did you have mail service that mailed in the news?

LOSE IN CENTER

A. No, not that I know of.

Q. Who had the tables at which they worked in this editor room?

A. I had my own table.

Q. You had your own table?

A. Yes, and Mr. Werner had his own table, and Dr. Darkow h his place where he had a typewriter, but he prepared things on long table, where Mr. Herbert also was sitting.

Q. How did the copy go from there to the compositors?

A. It was taken out and laid on a board.

Q. Who took it out?

A. Nobody.

Q. Nobody?

A. Yes, sir.

Q. You mean the compositors would come in and get it?

A. Sometimes they would come in when they were short. Mos it was prepared and put on a table, and when they wanted copy gave it out to them.

Q. Mr. Szepansckv, I show you Government's Exhibits Nos. 1, 10, 14, 20, 24, 28, 33, 38, 43, 52, 57, 59, 61, 63, 65, 67, 69, 71, 75, 78, 80, 82, 84, and 86, and ask you what they are?

A. They are copies of the Tageblatt.

Q. Of the dates specified on the headlines, and the date li
246 there?

A. Yes, the Sonnstageblatt and the Tageblatt.

Q. Of the Sonnstageblatt and the Tageblatt?

A. Yes.

Q. Of the dates specified here?

A. Well, I suppose so.

Q. Have you any doubt about that?

A. No.

Q. I want to show you first, I think, Government's Exhibit N 1, page 1, column 3, an article headed "de Krisis." You have amined that article at my request, have you not?

A. Yes.

Q. Did you prepare it?

A. No, sir.

Q. I show you Government's Exhibit No. 5, of an issue of t Tageblatt of the 10th of July, 1917, and call your attention to pa 3, column 3, article headed "Bestätigt." Did you prepare that ar cle?

A. No, sir.

Q. You have examined it at my request?

A. Yes, sir.

Q. Now, I show you Government's Exhibit No. 10, an issue of t Philadelphia Tageblatt of Friday, the 20th of July, 1917, and c your attention to page 1, column 5, article headed "Druncer Druber." Did you prepare that article?

A. No.

247 Q. You did not?

A. No.

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Q. I show you Government's Exhibit No. 14, being an issue of the Philadelphia Tageblatt of Wednesday, the 25th of July, 1917, and I show you first page 4, column 5, and call your attention to an article which is headed "Was Washington Hoffi." Did you prepare that article?

A. No, sir.

Q. I also show you in the same paper, page 5, column 4, an article headed "Servien." Did you prepare that article?

A. No, sir.

Q. I show you also Government's Exhibit No. 20, which purports to be an issue of the Philadelphia Tageblatt of Tuesday, August 14, 1917, and show you page 5, column 3, and ask you if you prepared the article there headed "Ein Interim"?

A. No, sir.

Q. I also show you Government's Exhibit No. 24, being an issue of the Philadelphia Tageblatt of Thursday, the 16th of August, 1917, and point to page 1, column 2, article headed "Nichts Sicheref." Did you prepare that article?

A. No, sir.

Q. I also show you Government's Exhibit No. 28, being an issue of the Philadelphia Tageblatt of Wednesday, the 22nd of August, 1917, and call your attention to page 5, column 2, to an article headed "Kreig der Reichen." Did you prepare that article?

A. No.

248 Q. I also show you Government's Exhibit No. 33, being an issue of the Philadelphia Tageblatt of Monday, the 3rd of September, 1917, and call your attention to page 4, column 4, to an article headed "Meiters Sintchranfungen." Did you prepare that article?

A. Not that I know of.

Q. Not that you know of?

A. No, sir.

Q. I also show you Government's Exhibit No 38, being an issue of the Philadelphia Tageblatt of Tuesday, the 4th of September, 1917, page 1, column 6, and point to article on page 1, column 6, headed "Sarrails Truppen Geichlagen." Did you prepare that article?

A. No.

Q. You did not?

A. No, sir.

Q. I also show you Government's Exhibit No. 43, being an issue of the Philadelhia Tageblatt of Friday, the 7th of September, 1917, and call your attention to an article appearing on page 1, column 1, headed "Fur Porlitifche Reformen." Did you prepare that?

A. No, sir.

Q. I call your attention also to page 4, column 3, of the same issue, to an article headed "Mas Foll Das." Did you prepare that?

A. No.

249 Mr. Gray: If your Honor pleases, I will ask leave to make the same objection to the introduction of the articles that are not named in the Bill of Indictment as I made when one of

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the preceding witnesses, Herbert, was upon the stand. Your Hon then ruled, and in order that I may save time, if the record m show my objection to each one of these articles, whichever th may be——

Mr. Roberts: We have not reached them yet.

Mr. Gray: The last one you asked him about was one of the

Mr. Roberts: Oh, yes.

Mr. Gray: You asked him as to the latter part of that particu paper.

Mr. Roberts: Yes.

Mr. Gray: If your Honor will allow my objection to be made, a if your Honor will rule, and let your ruling cover each of the a cles that may be referred to outside of the indictment, I will not again to interpose an objection.

The Court: As I understand it, as yet the articles themselves h not been offered in evidence. This is preliminary to making offer.

Mr. Roberts: That is correct.

Mr. Gray: That is true.

The Court: I understand, but it is perfectly proper for you make your objection at this time. The objection is overruled, a an exception allowed to the defendants.

(Objection overruled.)

250 (Exception noted for the defendants, individually a jointly, by direction of the court.)

Mr. Gray: And will your Honor allow that ruling and excepti to cover each one of the articles not in the indictment.

The Court: Yes, the same objection to be considered as made, a the same ruling, and the same allowance of the same exception every question along the same line.

By Mr. Roberts:

Q. I show you Government's Exhibit No. 52, being an issue of Philadelphia Tageblatt of Saturday, the 8th of September, 19 and call your attention to page 1, column 5, article headed "Zam bereit." Did you prepare that article?

A. No.

Q. I show you also Government's Exhibit No. 57, being an is of the Philadelphia Tageblatt of Wednesday, the 4th of July, 19 and call your attention to an editorial appearing at the head of editorial column on page 4, column 1, headed "Zum Vierten Jul Did you write that editorial?

A. No, sir.

Q. I also show you Government's Exhibit No. 59, being an is of the Philadelphia Tageblatt for Monday, the 6th of August, 19 and call your attention to page 4, column 4, to an article head "Yankee Bluff." Did you prepare that article?

A. Not that I remember.

Q. Not that you remember?

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A. No, sir.

251 Q. I also call your attention to Government's Exhibit No. 61, being an issue of the Philadelphia Tageblatt of Saturday, he 7th of July, 1917, and call your attention to page 4, column 1, o an article or editorial headed "Der Sechlichlag Recrutirung." Did you prepare that?

A. No, sir.

Q. I also call your attention to Government's Exhibit No. 63, be- ng an issue of the Philadelphia Tageblatt of Monday, the 2nd of July, 1917, and call your attention to page 1, column 4, headed "Die Meisterschüken."

Mr. Roberts: Do you want to object?

Mr. Gray: My objection covers this. I have made the same ob- ection. The objection I made covers this.

Mr. Roberts: This is in the conspiracy count.

By Mr. Roberts:

Q. Did you prepare that article?

A. Not that I know of.

Q. Not that you know of?

A. No, sir.

Q. I show you an issue of the Philadelphia Tageblatt, Govern- ment's Exhibit No. 71, of Friday, June 22, 1917, and call your at- ention to page 7, column 5, to an article headed "Sie Zuten Dunkbor Zein." Did you prepare that?

A. No, sir.

Q. I also call your attention to Government's Exhibit No. 73, be- ing an issue of the Philadelphia Sonnstageblatt, of Sunday, the 15th of July, 1917, and on page 1, column 1, I call your

252 attention to an article headed "Frieden." Did you prepare that article?

A. No.

Q. I also call your attention to Government's Exhibit No. 75, be- ing an issue of the Philadelphia Tageblatt of Wednesday, the 18th of July, 1917, and call your attention to an article appearing on page 1, column 3, headed "So Klingt's Recht." Did you prepare that article?

A. No, sir.

Q. I also call your attention to page 7, column 3, to an article headed "Bilanz von 1916." Did you prepare that?

A. No. That is plate matter.

Q. We will stop there just a moment. When you speak of "plate matter," did the paper receive plate matter from time to time?

A. Yes, regularly.

Q. Regularly?

A. As far as I know.

Q. As far as you know?

A. Yes, sir.

Q. That plate matter came all set up on the platin, all set up for the compositors, who would put it in the paper just at it stood?

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A. Yes, sir.
Q. And this article I asked you about is one of that kind?
A. Yes, sir, it looks that way.

Q. I also show you Government's Exhibit No. 78, being
253 issue of the Philadelphia Sonnstageblatt for Sunday, the 22
of July, 1917, and call your attention to page 7, column
to an article, the first words of which are "Roth Heigt Bie Canaill
Did you prepare that article?
A. No.
Q. I also call your attention to Government's Exhibit No. 80,
ing an issue of the Philadelphia Tageblatt of Friday, the 3rd,
August, 1917, and point to page 4, column 1, to an editorial hea
"Grau in Grau." Did you prepare that?
A. No, sir.
Q. I also call your attention to Government's Exhibit No. 82,
ing an issue of the Philadelphia Tageblatt of Thursday, the 4th
August, 1917, and call your attention to an article or an editorial
page 4, column 1, headed "Endlich-froat Botschampen." Did y
prepare that?
A. No, sir.
Q. I also call your attention to Government's Exhibit No. 84,
ing an issue of the 8th of August, 1917, and point you to page
column 3, where there appears an article headed "Die Kriegsziel
Did you prepare that?
A. No, sir.
Q. I also call your attention to Government's Exhibit No. 86,
ing an issue of the Philadelphia Sonnstageblatt of Sunday the 19
of August, 1917, and point to page 7, column 3, under the colu
headed "Spazierganger," the first words of which article are "
Elihu Root." Did you prepare that article?
254 A. No, sir.
Q. I also show you Government's Exhibit No. 9, which c
sists of a sheet on which is pasted certain German printed ty
matter, and which also contains a word in handwriting. In wh
handwriting is that word?
A. I cannot say for sure?
Q. You cannot say for sure?
A. No.
Q. Have you an opinion whose it is?

Mr. Gray: I object to that.

(Question withdrawn.)

By Mr. Roberts:

Q. By the way, there is a typewritten word on that. Was th
written on your typewriter?
A. I do not think so.
Q. You do not think so?
A. No, sir.
Q. I show you Government's Exhibit No. 32, and on that exhi

ere is a word in typewriting appearing amongst the German inted matter near the bottom. In whose typewriting is that?
A. I don't know.
Q. You don't know?
A. No, sir.
Q. In whose handwriting is the word at the top,—near the top?
A. I cannot say that, either.
Q. You cannot say that?
55 A. No, sir.
Q. I show you Government's Exhibit No. 37, and ask you whose handwriting is the pen written matter on that exhibit?
A. It might be Dr. Darkow's, but I would not say for sure.

Mr. Gray: I ask that that answer be stricken out.
Mr. Roberts: I have no objection.
Mr. Gray: He said, "It might be." Mr. Roberts says he has no bjection to having that stricken out.

By Mr. Roberts:

Q. Let me ask you this. Have you identified that writing before, n my presence?
A. Yes, you asked me about it, I believe.
Q. What did you tell me?
A. I suppose the same as I told you to-day.
Q. Are you sure?
A. It is pretty far back. I don't remember exactly.
Q. When did I ask you about it? Last spring, was it not, before his case was listed?
A. I believe it was the time when you had me come over some vening.
Q. Yes. I showed it to you.
A. Yes, sir, I remember that.
Q. Did you not identify it then?
A. Not for sure.
Q. You did not? I show you Government's Exhibit No. 42, and ask you if you can identify that pen written matter on that
56 exhibit at the top?
A. No, sir, not absolutely.
Q. Not absolutely?
A. No, sir.

Q. Have you an opinion as to whose it is from looking at it?

Mr. Gray: I object to that.

(Question withdrawn.)

By Mr. Roberts:

Q. Tell me, have you an opinion from looking at it, whose it is?
A. It looks like Dr. Darkow's.

Mr. Gray: I ask that that be stricken out again,—"It looks l
Dr. Darkow's." In the first place, he studied the handwriting
great length, and said he could not tell. Mr. Roberts then as
him whether he had an opinion as to whose handwriting it was.
then said, "It looks like Dr. Darkow's." In the first place, his s
ond answer must be taken in conjunction with his first answer, a
then again, if your Honor pleases, if he is asked to give a pure a
simple opinion, then Mr. Roberts has absolutely laid no ground
it at all.

The Court: I do not so understand it. The question was to bri
out the distinction which——

Mr. Gray: He is asked to guess.

The Court: The question was to bring out the distinction whi
possibly might exist in the mind of the witness between knowled
of who had written a particular writing, and his opinion fr
257 the handwriting itself, as to who did write it.

Mr. Gray: He has laid absolutely no ground for that.

Mr. Roberts: I will lay the ground.

The Court: It is technically opinion evidence.

By Mr. Roberts:

Q. Have you seen Dr. Darkow write?
A. Very little.
Q. Very little?
A. Yes.
Q. Have you seen his writing after it came from his hand?
A. Once in a while a word. That is about all.
Q. Once in a while a word?
A. Yes.
Q. All right. I will not press you on this, then.

Mr. Gray: I still move that his answer be stricken out.

Mr. Roberts: That "It looks like Dr. Darkow's"?

Mr. Gray: Yes.

Mr. Roberts: I will agree that it be stricken out.

By Mr. Roberts:

Q. I show you Government's Exhibit No. 47, which is a matt
in German type, and has certain things struck through with a pe
Did you do that,—strike that through?

A. No.

Q. You did not?

A. No.

258 Q. Mr. Szepansecky, to your knowledge, was there an is
of the Sonnstageblatt or Tageblatt published on every d
between June 15 and September 10?

A. Yes.

Q. I show you Government's Exhibit No. 88, which has som
hand-written matter on the sheets, yellow and white.

Mr. Gray: Will you lay the ground?
Mr. Roberts: Yes. I will have to do it in this way.
Mr. Gray: Do it in your own way.

By Mr. Roberts:

Q. I will ask you, do you know that handwriting?
A. Yes.
Q. Did you ever see that handwriting after it came from the pen the writer? That is what I mean. Did you see the handwriting the person?
A. Yes. I saw the same handwriting.
Q. You have?
A. I saw the same handwriting.
Q. Have you seen the man write, whose writing that is?
A. Yes, sir.
Q. Often?
A. Yes, sir, quite often.
Q. Whose handwriting is that?
A. Mr. Werner's.
Q. That is Mr. Werner's?
A. Yes, sir.
Q. Mr. Werner's?
A. Yes, sir.

The Court: What was the answer? I did not catch it.
Mr. Roberts: He said it was Mr. Werner's.

By Mr. Roberts:

Q. Have you seen Mr. Herman Lemke, the business manager of Tageblatt Association, write?
A. I have seen him write, but very little.
Q. Do you feel yourself competent to recognize his handwriting you saw it?
A. Only his signature.
Q. Only his signature?
A. Yes, sir.

Cross-examined.

By Mr. Gray:

Q. Take these various exhibits which you say are newspapers and k out for me the articles you did write?
A. Here is something.
(The witness indicates article in Government's Exhibit 1 on page olumn 2.)

Q. All right. Show me the rest.
A. Here is one I believe I wrote.

(Also indicating article *on* the first column of the last page in same exhibit.)

The Witness: I believe so. I don't know.

260 By Mr. Gray:

Q. What is that? Won't you speak up so that the jury can h you? What did you say?

A. I believe I wrote it.

Q. You believe you wrote it?

A. I will have to look it over again. Yes, I wrote that.

Q. All right. Go ahead through the other papers.

A. Here is one I think I wrote. (Indicating Government's hibit No. 5, page 1, column 7.)

The Witness: Yes. All local news, either I made it, or the that was helping me made it, because I don't remember.

Q. All local news, either you made it or the man that was help you made it, because you don't remember?

A. I don't remember exactly which, only what I wrote myself.

Q. But, as a matter of fact—I do not know whether I can shor this or not,—but, as a matter of fact, you have absolutely no me by which you can tell which you wrote and which you did not wr have you?

A. No.

Q. So that when you told Mr. Roberts that you did not write th various articles that have been called to your attention, you are at all sure of it, are you?

A. Yes, I am sure I never wrote them.

Q. Why are you sure you never wrote them?

A. Well, if I had written them I should remember somethi about them, and I am positive I had nothing to do with th

261 on these dates mentioned.

Q. You had nothing to do with them on these dates m tioned. What date? You tell me the dates that you had nothi to do with them. What dates are you talking about?

A. During the week days I only made local news. I never m any foreign news.

Q. During the week days you only made local news?

A. Yes.

Q. And you never made foreign news?

A. No. The papers that appeared on the week days.

Q. Did not you ever help make up the foreign news during t week days?

A. No. It is only for the Sunday edition.

Q. Only for the Sunday edition?

A. Yes.

Q. So that it was the foreign articles appearing in the Sund edition that you are responsible for?

A. Not all. War news. Regular war news appearing in the Su day edition.

Q. All regular war news you are responsible for?

COPY BOUND C

Yes, sir.
And will you say that none of the war news or foreign news
ing in the week day editions had you anything to do with?
No.
None of that?
A. No, sir.
Q. How about the days when Dr. Darkow was away on his
vacation?
Mr. Herbert made them up then.
Mr. Herbert made them up?
Yes.
Then Herbert, the man who yesterday said he had nothing to
h the foreign news, is the man, you say, who took care of the
n news when Darkow was away?

Roberts: He did not say that.

Yes, during those days, during the days when Dr. Darkow was
vacation.

By Mr. Gray:

Herbert took care of that?
Yes.
What days were they? When was it Darkow was on his va-
?
That I cannot tell.
That you don't know?
No.
Will you say that you did not, therefore, write any foreign
rticles in any edition of the daily paper?
No.
Only in the Sunday?
Sunday.
You are sure of that?
Yes.
Q. You did not translate any of them during the week?
A. No.
Q. Did you write any editorials of any kind?
No.
Of no kind?
No.
At no time?
No.
Did you take a vacation at all during the summer of 1917?
No, sir.
You did not?
No, sir.
What hour did you get to your place to work?
About three o'clock in the afternoon.
About what time did the compositors start to set up their

OSE IN CENTER

A. About four o'clock.
Q. About four o'clock?
A. Yes.
Q. What time did Darkow get there?
A. About around six.
Q. Around that?
A. Between five and six.
Q. In other words, you had to supply the compositors w
enough work to keep them busy until about six o'clock at le
did you not?
A. Yes, sir.
Q. But you never at any time gave them any foreign ne
264 A. I gave them some news from other cities in the Uni
States.
Q. You mean by that news that you got out of newspapers fr
other cities?
A. Yes, sir, sometimes when they got short of copy.
Q. Those things you got out of the newspapers of other ci
might have been also news from the other side. Isn't that true?
A. No, sir, because I was told not to bother with those things.
Q. You got news from the Staats Zeitung of New York?
A. Yes.
Q. You did that yourself before Darkow got there?
A. Yes, sometimes.
Q. And sometimes that news purported to be despatches fr
London or Berlin or Paris?
A. No.
Q. At no time?
A. No.
Q. You are sure of that?
A. I am sure of that.
Q. You never wrote an article or an editorial on the Fourth
July?
A. Not an editorial.
Q. An article?
A. Yes, I wrote an article.
Q. Your own composition, was it not?
A. Composition, yes.
265 Q. Therefore, it was what the newspaper men designate
an editorial, was it not, on the Fourth of July?
A. No, it was not an editorial.
Q. It was an article of your own composition, was it not?
A. Yes.
Q. It was not clipped from any where else?
A. No, sir.
Q. It originated in your paper?
A. Yes.
Q. It was not a news article, was it.
A. Well, it was what we call news.
Q. It was what you call news?

COPY BOUND

. Yes.
. All right. We will pass it at that.

By Mr. Roberts:

. So that we will not get confused, you are not referring to the rial that I showed you called "Zum vierten Juli." You did rite that?
. No, sir. That is a regular editorial. I had nothing to do that.

By Mr. Gray:

. Was not your article an article on the Fourth of July?
. I wrote some of it about the Fourth of July, but not an edi-l.
. Did it appear on the Fourth of July?
. I don't know. I suppose it did.

Q. You speak of this column called the "Promenader" in English. All the other editors contributed to that, did they not?

. I don't know who contributed exactly.
. You did?
. A lot of it came in from the outside.
. You did?
. What?
. You contributed to that?
. I don't know whether I did or not.
. You don't know. Then, you cannot recollect much about you did or what you did not do, can you?
. It is quite a long while ago.
. It is quite a long while ago?
. Yes.
. Your recollection is rather poor, is it?
. No.
. What?
. Yes, to those things. I don't remember everything exactly.
. You don't remember everything exactly?
. No.
. In publishing articles that are clipped from other newspapers, the general rule of newspapers that do that to make changes e articles, is it not?
. Yes.
. Change the headings?
. Yes.
. Sometimes shorten the article?

A. Yes.

Q. And sometime- add to it?

A. Yes.

. What is the reason for that?
. So that it will not have exactly the same wording that it had in ther paper.

OSE IN CENTER

Q. Exactly. So that it will not look as if it had been lifted bod out of another paper and put into your paper?
A. Yes.
Q. That is done by all newspapers, is it not?
A. Yes, sir.
Q. English and others?
A. Yes, sir.

Mr. Roberts: I object to that unless the witness has knowledge what other papers do.
The Court: He is in the newspaper business. He is assumed know what is the usual thing.

By Mr. Gray:

Q. Such articles as you spoke of, "plate matter,"—that is mat that is furnished to you in the syndicate system, that goes to different newspapers?
A. Yes, sir.
Q. When did you leave the employ of the Tageblatt?
A. About the middle of November.
Q. Last year?
A. Yes.
Q. Where did you go?
268 A. New York City.
Q. Why did you leave?
A. I wanted to take up my trade again and I made out better New York than in Philadelphia.
Q. There was no other reason?
A. No, sir.
Q. You were not in trouble with the Tageblatt?
A. No.
Q. You had no difficulty with them?
A. No.
Q. You had not taken any money that did not belong to you?
A. No. I owed them some money that Mr. Lemke gave me.
Q. Some money you helped yourself to?
A. No. Mr. Lemke gave me an order for some stuff at Stra bridge & Clothier's, and I got that, and that was not paid off th when I left.
Q. But you got something that did not belong to you, and y went away, didn't you?

Mr. Roberts: I object to that very strongly. That is highly i proper. He has asked the witness about it. The witness said th he got an order for some goods on Strawbridge & Clothier, and wh he left he had not paid it. Mr. Gray then said "When you g something that did not belong to you, you went away." I object that very strongly.
Mr. Gray: If I am not correct, he may say so.

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By Mr. Gray:

Q. You tell this jury in your own way what your trouble was, and why you left?

A. I left for New York because I wanted to better myself.

Q. You wanted to better yourself?

A. Yes, sir, to go back to my trade.

Q. Look over that way so that the jury can hear you.

A. I went to New York to better myself. That is the only reason y I left the Tageblatt. The people at the Tageblatt knew I was ing to leave.

Q. You did leave owing them some money?

A. Yes, I owed them some money.

Q. Will you tell the jury the circumstances under which you owed em the money?

A. I had an order at Strawbridge & Clothier's for some clothes, d when I left it was not paid off. On the other hand, I had an vertisement which I got for the Tageblatt, and the percentage on at was due to me, so that would partly make up for it, anyway.

Q. When you went to New York you got a job and bettered your- f, did you?

A. Yes, sir.

Q. Did you ever pay the Tageblatt?

A. Not yet.

Q. What is that?

A. Not yet.

Q. (Paper shown witness.) That is your writing, is it not?

A. No.

Q. You say no, that is not your writing?

A. Let me see it, please?

Q. I will let you see it. You do not have to read it all to whether it is your writing, do you?

A. No, that is not my writing.

Q. That is not your writing?

A. No, sir.

Q. Is that sheet your writing? (Another paper shown witness.)

A. No, sir.

Q. (Another paper shown witness.) Is that sheet your writing?

A. No.

Q. Where did you live in New York on January 2, 1918?

A. 215 West 105th Street.

Q. When did you move there?

A. Shortly before Christmas.

Q. When did you leave there?

A. Shortly afterwards. Perhaps two weeks afterwards.

Q. Where did you move to?

A. 81 Prospect Place, Brooklyn, New York.

Q. Where did you say you lived on January 2, 1918? 215——

A. 215 West 105th Street.

Q. I show you the fourth sheet. Is that your writing? (Paper own witness.)

LOSE IN CENTER

A. No.
Q. Is that your signature?
A. That signature is not.
Q. Is that your signature?
A. No, that signature is not.
271 Q. Is that your address, 215 W. 105th Street?
A. That is my address.
Q. Apartment "Easton," New York City?
A. Yes.
Q. But that is not your writing?
A. That is not my writing, but it is my address.
Q. None of it is your writing, but it is your address?
A. Yes. It is a bad fake of my signature.

Mr. *Roberts:* I will say, if the court pleases, in fairness t witness, that this letter, or these papers which I have here, and I have shown him——

Mr. Roberts: I do not think it is necessary for Mr. Gray to any statement.

Mr. Gray: I want to correct something. I think it is prope I should state it. If Mr. Roberts does not want me to, I will no it.

Mr. Roberts: No, you need not state it.

Mr. Gray: All right. That is all.

By Mr. Gray:

Q. You are under subpœna?
A. Yes.

Mr. Gray: Mr. Roberts, will you have him remain here?

Mr. Roberts: I want him to get back to work.

Mr. Gray: I find this is not the original paper.

Mr. Roberts: Oh, this thing that you have been bellowing is not in his writing, then?

272 Mr. Gray: No. That is what I wanted to say in fa to him, but you would not let me say it. In other wo have the copy. I can have the original here shortly. I want to remain here.

Mr. Roberts: I want him to get back to work.

Mr. Gray: Then, will your Honor instruct the witness to re

Mr. Roberts: I will instruct him to stay, of course. He ha to stay if you want him.

Mr. Gray: The original is not here.

The Court: Mr. Gray, the witness started to read that paper you raised the question that he ought to be able to say whet was his handwriting without reading it.

Mr. Gray: Certainly. I could tell immediately if my hand ing was shown me, whether it was mine, without hesitation.

The Court: Could not you serve your purpose by letting him that paper, and then ask him whether he wrote the letter of w that is a copy?

Mr. Gray: I will do that.

COPY BOUND

By Mr. Gray:

Q. You read that paper and tell me whether you wrote a letter of hich that is either a copy or a translation of your original letter hat was in German?

Mr. Roberts: This is in English?

Mr. Gray: Yes.

73 The Witness: That is a copy of a letter that I wrote to Mr. Lemke.

Mr. Gray: That is all. You need not stay, then.

74 OTTO A. SEIFFERT, having been duly sworn, was examined and testified as follows:

By Mr. Roberts:

Q. You have been referred to here as having been in the employ f the Philadelphia Tageblatt Association?

A. Yes sir.

Q. Were you there on September 10th when the warrant was erved?

A. Yes.

Q. Were you employed there at that time?

A. Yes.

Q. How long before that did you come to their employ?

A. The middle of August.

Q. The middle of August?

A. Yes.

Q. What were your duties there?

A. I was assistant to Mr. Szepansecky.

Q. Assistant to Mr. Szepansecky?

A. Yes sir.

Q. During the time that you were there who wrote the editorials?

A. Mr. Werner.

Q. And who wrote the foreign news, by which I mean news at ome, political news, from outside the city?

A. Dr. Darkow.

Q. Was Dr. Darkow off any day of the week?

A. Yes.

75 Q. What day?

A. Saturday.

Q. Was Mr. Werner off any day of the week?

A. He was off also.

Q. What day?

A. I don't know which day.

Q. You don't remember which day?

A. No sir.

Q. During the time that you were there did you prepare any war foreign news?

A. On the day the paper was raided.

Q. Not before that?

CLOSE IN CENTER

A. A little, yes, when Mr. Darkow left, when Mr. Darkow left editorial room, and there came news in, I translated it and gave the composing room.

Q. That is, Dr. Darkow would hand you some translating?

A. No, when Mr. Darkow was away—Mr. Darkow left someti at 12.30 or one o'clock, and afterwards we would get news, an would have to be printed, so I took it and gave it to the compo room.

Q. You mean after Dr. Darkow would go home at night?

A. Yes.

Q. And some would come in?

A. Yes.

Q. And you would give it to the composing room?

A. Yes sir.

276 Q. Did you ever prepare an editorial for this paper?

A. Never.

Q. You say you came here in the middle of August?

A. Yes sir.

Q. Then, I take it you had nothing to do with preparing ar the articles in this paper in July?

A. No, nothing.

Q. I show you several Government exhibits, the first of whi Government Exhibit No. 20, issue of the Philadelphia Tageblz the 14th of August, 1917, and call your attention to an artic page 5, column 3. I have asked you to examine that article. you prepare that?

A. No.

Q. It is headed "Ein Interim."

A. Yes.

Q. I show you Government Exhibit No. 24, which is the I delphia Tageblatt of the 16th of August, 1917, and show you 1, column 2, an article headed "Nichts Sicheres," which I have you to examine. Did you prepare that article?

A. No sir.

Q. I show you an issue of the 22nd of August, 1917, Goverr Exhibit No. 28, page 5, column 2, which article is headed " Der Reichen." Did you prepare that article?

A. I did not.

Q. I show you Government Exhibit No. 33, being an issue 3rd of September, 1917, of the Philadelphia Tageblatt, and you to page 4, column 4, to an article headed "M

277 Sinfchranfungen." Did you prepare that article?

A. No sir.

Q. I show you Government Exhibit No. 38, being the issue Philadelphia Tageblatt of September 4, 1917, and point you to 1, column 6, article headed "Sarrails Truppen Geichlagen." you prepare that article?

A. No sir.

Q. I show you Government Exhibit No. 43, being the issue Philadelphia Tageblatt of the 7th of September, 1917, artic

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page 1, column 1, headed "Fur Porlicifcht Reformen." Did you prepare that article?
A. No.
Q. I show you on the same paper an article on page 4, column 3, headed "Mas Foll Das." Did you prepare that article?
A. No.
Q. I show you Government Exhibit No. 52, which is an issue of the Philadelphia Tageblatt of the 8th of September, 1917, and point you to page 1, column 5, an article called "Campfbereit." Did you prepare that?
A. No sir.
Q. I also call your attention to Government Exhibit No. 86, being an issue of the Philadelphia Tageblatt of the 19th of August, 1917, and point to an article on page 7, column 3, under the heading of "Spazierganger," beginning with the words "Mr. Elihu Root." Did you prepare that article?
A. No sir.
Q. What are they?
78 A. The first paper is the Philadelphia Sonntageblatt.
Q. What are the others?
A. The Philadelphia Tageblatt.
Q. The Philadelphia Tageblatt?
A. Yes sir.
Q. Have you seen Dr. Darkow write?
A. Yes.
Q. And have you seen his handwriting after it was made?
A. Yes.
Q. I show you Government Exhibit No. 9, which contains a handwritten word at the top, the word "Bestatigt." Do you know in whose handwriting that was?
A. Yes.
Q. Whose is it?
A. Dr. Darkow's.
Q. I show you Government Exhibit No. 32. That contains two handwritten words, one at the bottom. Do you know in whose handwriting that is?
A. Dr. Darkow's.
Q. It contains also a written word at the top. In whose handwriting is that?
A. Dr. Darkow's also.
Q. Dr. Darkow's?
A. Yes sir.
Q. I show you Government Exhibit No. 37, which contains considerable handwritten matter at the side of a printed sheet.
79 In whose handwriting is that?
A. Dr. Darkow's.
Q. I show you Government Exhibit No. 42, which contains some handwritten matter. In whose handwriting is that?
A. Dr. Darkow's.
Q. I show you Government Exhibit No. 47, and ask you as to

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the article which appears in print there, to which you see crossing out, in ink.

A. I did not do it.

Q. You did not?

A. No sir.

Q. I show you Government Exhibit No. 51 and ask you in whose handwriting the handwritten matter at the top of the sheet is?

A. Dr. Darkow's.

Q. Dr. Darkow's?

A. Yes sir.

Q. I show you Government Exhibit No. 56, which contains a word in handwriting at the top. In whose handwriting is that?

A. Dr. Darkow's.

Q. Do you know Mr. Lemke's handwriting?

A. No, I don't know it.

Q. I show you Government Exhibit No. 88, being a bundle of written sheets. I ask you if you know in whose handwriting that is

A. I do.

Q. Have you seen the person who made those write?

280 A. Yes sir.

Q. And have you seen his writing after it came from his hand?

A. Yes sir.

Q. In whose handwriting is that?

A. Mr. Werner's.

Q. Mr. Werner's?

A. Yes sir.

Q. Where did the compositors get their copy that they set up for this paper?

A. From the editorial room.

Q. All of it went out from the editorial room?

A. Yes sir.

Q. When you were there who was the chief editor?

A. Mr. Werner.

Q. And who was the managing editor?

A. Dr. Darkow.

Cross-examination.

By Mr. Gray:

Q. Where were you born?

A. In Germany.

Q. How long have you been here?

A. In this country?

Q. Yes.

A. Since 1914.

Q. Since 1914?

A. Yes.

Q. How old are you?

281 A. Thirty-two.

Q. How old?

A. Thirty-two.

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. How is it that you can tell the jury that you are able to pick these articles and say you did not write them?
. Because I know what I have written.
. You know what you have written?
. Yes.
. Do you mean you can tell the jury offhand every article that wrote from the time you came there in August of 1917 until time you left?
. I am able to do that.
. You are able to do that?
. Yes.
. But you would have to have pointed out to you the newspapers, mean?
. What do you mean by pointed out?
. How many articles did you write a day or did you have anyg to do with in a day?
. I generally did the local news.
. Of course, I know you generally did the local news, but I t to know how many articles of any kind you had anything to ith during one day's work?
. I cannot count the number of articles.
. You don't know how many?

A. No.

Q. A good many, was it not?

A. Certainly.

. And you helped Szepanscky, did you?
. I did.
. You never wrote any editorials?
. Never.
. And you never had anything to do with any of the foreign ?
. Well, as I told you before, when Mr. Darkow left the office be- his time, about 12.30 or one, and after this time news came in, I found it was good for our paper, I translated it and gave it to composing room.
. Can you point out each one of those articles where you would that?
. Yes.
. You can?
. Yes.
. Very readily?
. Yes.
. Can you name any one of them now?
. Well, I brought all on the "Latest Telegram."
. I do not quite understand you. What do you mean by that?
. These articles I have written after Dr. Darkow left I have ught just on the "Latest Telegram."

By Mr. Rogers:

Q. You mean you headed them that way?

3 A. I headed them that way.

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By Mr. Gray:

Q. What would you head them?
A. "Latest Telegram."
Q. "Latest Telegram"?
A. Yes.
Q. And at no other time did you ever put any other article in th newspaper except it was headed "Latest Telegram"?

Mr. Rogers: He did not say "any article."
Mr. Gray: I am not talking about local stuff. I want to unde stand the witness. That is what I am after.

By Mr. Gray:

Q. Every article containing foreign news that you had anythi to do with has marked over the top of it "Latest Telegram." Ha or has it not?
A. These few articles I have written without this heading I c point out every time.
Q. You can point them out?
A. Yes.
Q. What is there particularly about the articles that helps you point them out? Is it your recollection of the article itself, or is ear-marked in some particular way?
A. Well, if it was a big item, that we could not head it "Lat Telegram," we made a headline.
Q. In some cases you made a headline?
A. Yes sir.
284 Q. What is there that leads you to be able now a ye later to tell this jury which ones of these articles you handle That is what I want to know.
A. I know my writing.
Q. Can you pick the original article?
A. Certainly.
Q. But you cannot tell us from the newspapers themselves, y mean?
A. I can do the same.
Q. Is it because of your memory? You can remember them fro memory?
A. I remember them, because there were so few that I can remem ber them.
Q. There was so few that you can remember them?
A. Yes sir.

By Mr. Roberts:

Q. You are referring to the foreign matter?
A. Yes sir, foreign matter.

By Mr. Gray:

Q. And was there any day during the time that you were there that you had entire charge of the foreign news service?

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. Never.
. Was there any day when you were there that Darkow was away
he day?
. I was there also.
Q. I say, was there any day when Mr. Darkow was away altogether for the whole day that you were there?
A. I was there.
. Who had charge of the foreign news service on those days?
. Mr. Szepansecky and Mr. Werner.
. Szepansecky and Werner?
. Yes.
. Then, occasionally you made some translations even when Darkow was there, did you not?
. Yes, when Mr. Darkow was there and he left before his time.
. I am not talking about when he left before his time. I am ing about the days when he was there and you were there, too. those days you occasionally helped him make translations, didn't ?
. Not Dr. Darkow.
. Not Dr. Darkow?
. No sir.
. Did you help Mr. Werner make them?
. No.
. Did you help make any translations of foreign news or edi-als—of course, you would not translate the editorials—did you p make any translations of foreign news at the time when Darkow there?
. No.
. You did not help him?
. No sir.
Q. Did you write a letter after you left—when did you 5-88 leave there? When did you leave the Tageblatt? When did you stop being employed by them?
. The end of November.
. The end of November?
. Yes.
. Did you write a letter to Mr. Christ?
. Yes sir.
. In care of the Tageblatt, since then?
. Yes sir, I did.
. A typewritten letter?
. Yes sir.
. I show you three pages. Is that the letter you wrote?
. It is.
. Look at them all.
. Yes, it is.

OSE IN CENTER

ADOLPH G. ANGERMAN, having been duly sworn, was examin and testified as follows.

By Mr. Roberts:

Q. What was your position between June 15 and September 1917, on the Tageblatt?

A. I was linotype operator, that is, compositor at the machin and on two days of the week I was foreman.

Q. You were compositor there?

A. Yes.

Q. And two days of the week you were foreman?

A. Yes sir.

289 Q. I show you Government Exhibits Nos. 1, 5, 10, 14, 24, 28, 33, 38, 43, 52, 57, 59, 61, 63, 65, 67, 69, 71, 73, 78, 80, 82, 84 and 86. I ask you what they are?

A. They are issues of the Philadelphia Sonntageblatt and Philadelphia Tageblatt.

Q. Of the dates mentioned at the top?

A. Yes sir.

Q. Where did the men in the composing room get their copy set up the machines?

A. As a rule, they were brought through the editors and laid the shelf that was near the door at the editors' room.

Q. Brought out by the editors and laid there?

A. Yes sir, unless there was nothing there, then occasionally compositor went into the editors' room and asked for copy th when it got scarce.

Q. All of the copy you got, with the exception of the advert ments, came out of the editorial room?

A. Yes sir.

Q. Who was the chief editor of the paper during that peri

A. Mr. Werner.

Q. And who was the managing editor?

A. Mr. Darkow was titled the managing editor.

Q. Who wrote the editorials?

A. Mr. Werner mostly.

Q. Did you set Mr. Werner's copy?

A. Occasionally, but if I could get out of it I generally

290 Q. When you could get out of it you did?

A. Yes sir.

Q. (Paper shown witness.) Is that Mr. Werner's handwriti

A. Yes sir.

Q. Who set the editorials principally? What man in the pla

A. Oftenest Mr. Max Lemke.

Q. Mr. Max Lemke?

A. Yes sir. Other men set some, too.

Q. (Paper shown witness.) That is the form in which the torials came to you?

A. Yes sir. Well, they came in reprint sometimes, too.

Q. Sometimes they came in reprint?

A. Yes sir, sometimes half reprint.

Q. And half this matter?

A. Half this kind, yes sir, or partways anyhow.

Cross-examination.

By Mr. Gray:

Q. During the summer of 1917 Mr. Werner was away a great deal, as he not?

A. Well, Mr. Werner's time was very irregular, it appeared to me. ometimes I did not see him at all. Other times I saw him come in te and go away early, and sometimes I thought he had not been ere much at all.

Q. Sometimes he did not come there for days at a time. That is true, is it not?

91 A. So it seems. I did not see him at least.

Q. He was sick a good deal in the summer of 1917, was e not?

Mr. Roberts: If you know.

Mr. Gray: Do not suggest anything to your own witness. Let me ross-examine him.

Mr. Roberts: Some of these witnesses are not so valuable to us.

The Witness: I heard he was sick, yes sir, or I was told he was ick. I did not see him for quite awhile.

Mr. Roberts: I move that that answer be stricken out. We do ot want what this witness was told.

The Court: The important thing is that he was not there.

Mr. Gray: That is the important thing, of course.

By Mr. Gray:

Q And in setting up your work, who set up the headlines that ent over the news articles?

A. Mostly the people that prepared the copy.

Q. Was it done sometimes by you?

A. In very rare instances, maybe one line I made myself, but hat we call the regular captions, I never made any. If the editor ould have omitted on a small piece of copy, if he would have omitted the titles, I might have just put there what I thought it was, just o fill out, I would have told the compositor to put such a heading on. I would put it on the top, just to make it look like an

292 item in case it was part of another item.

Q. As a matter of fact, where there were two or three headings, with a heading and a sub-heading, you would put on the headings, except the main one, didn't you?

A. If there was more than one heading, the editor generally wrote the headings.

Q. The editor what?

A. The editor made the headings as long as they were more than one line, and in very rare cases I made the headings.

Q. I thought you said at one time that you set up the headings on the machines, except the main heading, and when there was a

heading, three headings or four headings, you also set the first li up on the machine?

A. Yes, sir, that is right.

Mr. Roberts: That is not making them. That is setting them u

Mr. Gray: I will ask Mr. Roberts not to interfere with my cro examination. I have not done it when he has been examining t witnesses, unless I wanted to make an objection to the testimon

The Witness: That applied, that I set up the headings on the m chine, on the copy that I had.

By Mr. Gray:

Q. And have not you also said that where there was more th one heading, you made the headings as a usual thing? I am n talking about setting them up. I am talking about making t headings.

293 A. I never made any. I never edited the headings exce in very rare cases, when there was an item that——

Q. That had no heading on it?

A. —that had no heading on it.

Q. What work did Mr. Herbert do there?

A. He was down at the mailing department when I first got t know him, helping out.

Q. In 1917 is the time I am talking about.

A. 1917?

Q. Yes?

A. As long as I know, he was helping out in the editors' roo

Q. Did Mr. Herbert ever give you copy for foreign articles?

A. No sir.

Q. Did he ever give you any editorials?

A. Well, not at that time.

Q. Not at what time?

A. At this time.

Q. When did he give you editorials?

A. Since then.

Q. Since then?

A. Yes sir.

Q. Since what date? Will you fix the date, if you can?

A. That has been lately. That has been after this here. It h nothing to do with this.

Q. That has been after the arrest was made in this case?

A. After the arrest was made, yes sir.

Q. Who handled the foreign news on Saturday when D

294 Darkow was not there?

Mr. Roberts: If you know.

By Mr. Gray:

Q. Do not answer anything if you do not know it.

A. To my knowledge, Mr. Szepanscky, helped to make them out

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am not certain whether Mr. Werner made any or not, because lf principally all these days, I was employed in the foreman's tment. I had nothing to do with the copies.
How long have you been with the Tageblatt?
With the exception of some years, I have been there ever the Tageblatt made its very first week's appearance.
When is that? How long ago?
About forty years.
About forty years?
Yes sir.
And how long had Mr. Werner been with the paper?
About also, with the exception of some time, I do not know her with the exception of one year or months, about thirty- years, I presume. I am not certain of that. He came there al years after I had been there.

CHARD RICHTER, having been duly sworn, was examined and ied as follows:

By Mr. Roberts:

What position did you hold in the summer of 1917 on the Philadelphia Tageblatt?
A. Foreman in the composing room.
Q. Foreman in the composing room?
Yes sir.
And from where did you receive the copy that was set up, that xcept the advertising? Where did the copy come from?
I did not receive any copy because the copy came on the shelf de.
That is what I want you to tell the jury. Where was the copy
On the outside, on the shelf in the machine room, on the f of the composing room.
On the shelf on the outside of the editors' room?
Yes sir.
And who placed it there?
The editors.
And you got all of your copy from there, from the editors' n?
Yes sir.
Who wrote the editorials during that period?
Mr. Werner.
Who wrote the foreign news articles?
I guess, so far as I know, it was Dr. Darkow and some, Mr. anscky.
Some, Mr. Szepanscky?
Yes.
And when Dr. Darkow was away who wrote it?
A. Szepanscky.
Q. Szepanscky?

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A. Szepanscky.
Q. Is that right?
A. Yes, that is right.
Q. Do you know Dr. Darkow's handwriting?
A. No.
Q. You don't know his handwriting?
A. No.
Q. You did not set his editorials?
A. No, I did not set any.
Q. By the way, these papers that have been shown to the previou witnesses, Exhibits Nos. 1, 5, 10, 14, 20, 24, 28, 33, 38, 43, 52, 5 59, 61, 63, 65, 67, 69, 71, 73, 75, 78, 80, 82, 84 and 86—what a they?
A. The Philadelphia Sonntageblatt and the Philadelphia Tag blatt.
Q. Of the various dates as mentioned?
A. Yes sir.
Q. Was there an issue of the Philadelphia Sonntageblatt and th Philadelphia Tageblatt published every day between June 17 an September 17th?
A. Yes, every day.

(No cross-examination.)

FRANK L. MALONE, having been duly sworn, was examined an testified as follows:

By Mr. Roberts:

297 Q. With what concern are you connected?
A. I was connected with the United News Company.
Q. Are you with them now?
A. No sir.
Q. Were you with them in the summer of 1917?
A. Yes.
Q. In what capacity?
A. As foreman.
Q. As a part of your duties as night foreman, what did you hav to do with the Philadelphia Tageblatt?
A. We just put them out to all the dealers in the City of Phil delphia, whoever ordered them.
Q. How and where did you get them?
A. I sent my driver up after them. They were at that time u on Callowhill Street above 6th.
Q. When you would send your driver for them, where would you driver bring them to?
A. He would bring them to the United News Company.
Q. Where was its office?
A. At 923 Filbert Street.
Q. Did you see them there?
A. Yes sir.
Q. What did you do to them after they came?

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A. I counted them there and sent them out to the different dealers.

Q. And can you say whether that practice covered from June 15th to September 10, 1917?

A. Yes.

Q. You were there all the time, were you?

A. Yes sir.

Q. As a regular matter of business, you received them, counted them, and sent them to the news dealers in the City of Philadelphia?

A. Yes sir.

Q. What was the purpose of counting them? What did you have to count them for?

A. Some dealers would want one, two, ten and twenty, whatever the order called for.

Q. Who took care of getting them for the various dealers?

A. I did.

Q. What did you do with them?

A. They were rolled up, the driver would get them and deliver them to the different stores.

Q. And who billed the dealers for them?

A. The clerk's office upstairs.

Q. In your business?

A. Not me.

Q. I mean, you had a particular clerk who had that to do?

A. Yes.

Q. And collected the bills?

A. They got them off my galleys.

Q. You made up a sheet?

A. Yes.

Q. Have you got that sheet here?

A. Probably the manager has.

Q. The manager has that sheet here?

A. Yes sir.

Q. By the way, did your concern send the papers to the post office for mailing, too?

A. Yes, the driver, he brought the papers to me and brought the bill to the post office.

Q. And then how was that billed to the Tageblatt?

A. We paid for the mailing, and then we billed that money to the Tageblatt, and they paid us back.

Q. That was a matter of every morning?

A. Every morning, yes sir.

(No cross-examination.)

EDGAR B. HOPPE, having been duly sworn, was examined and testified as follows:

By Mr. Roberts:

Q. You are with the United News Company?

A. Yes sir.

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Q. In what capacity?
A. Manager.
Q. Who, to your knowledge, made the arrangement with th Tageblatt Association whereby you were to deliver papers to the po office for mailing?
A. I made it with Mr. Lemké, their manager, their business ma ager.
300 Q. And in pursuance of that what was done?
A. We sent a man to the Tageblatt office to receive suc bundles that they had to deliver in accordance with our arrangemen that is, to the post office and to the trolley cars and to the railroa stations, and delivered them in accordance with our understandin
Q. Then, how did the Tageblatt pay you for that?
A. We rendered them a bill.
Q. And those bills were paid?
A. Yes.
Q. Covering the postage?
A. Yes.
Q. United States postage?
A. Yes.
Q. Was that done to your personal knowledge—did that cov from June 15th to September 10th, every day and Sunday?
A. Yes.
Q. Every day and Sunday in that period?
A. In that period, yes sir.

(No cross-examination.)

DANIEL J. O'CONNELL, having been duly sworn, was examined an testified as follows.

By Mr. Roberts:

Q. What is your position with the United News Company?
A. Bookkeeper.
Q. And as that bookkeeper did you have a charge accoun
301 with the Philadelphia Tageblatt?
A. I did.
Q. And did you keep the accounts yourself?
A. Yes sir.
Q. And from that account can you state what was billed to th Philadelphia Tageblatt as paid to the Philadelphia post office by you concern for mailing copies of the Tageblatt?
A. Yes sir.
Q. Will you tell us what was paid under date of July 2, 1917, fo postage? Will you look at the date under July 2, 1917, and tell u what was paid for postage?

Mr. Gray: Just look at it. That is all you are asked to do now.

By Mr. Roberts:

Q. Just look at it. That is all.
A. What date?
Q. July 2, 1917.

Mr. Gray: Just look at it.
Mr. Roberts: Mr. Gray does not want you to tell us what it is. st look at it.
The Witness: Yes sir.

By Mr. Roberts:

Q. Do not answer this question until Mr. Gray has had a chance object. Do you personally know—do not answer this until Mr. ay has had a chance to object—what was paid to you by the Phil-elphia Tageblatt Association for postage?
A. Yes sir.
Q. Have you the account?
A. Yes sir.
Q. Will you please state—do not answer this question until Mr. ay has had a chance to object—will you state what amount you id for postage on July 2, 1917, which was repaid to you by the geblatt Association?

Mr. Gray: That is objected to.

(Objection overruled.)
(Exception noted for the defendants, individually and jointly, direction of the Court.)

By Mr. Roberts:

Q. Please answer the question.
A. Thirty cents.
Q. Will you please turn to July 10, 1917? Have you got the ount that was paid for postage?
A. Yes.
Q. What?
A. Yes sir.
Q. Have you it?
A. Yes sir.
Q. Was that amount, as far as you know, repaid to you by the geblatt Association for the amount of postage?
A. Yes.
Q. It was?
A. Yes.
Q. Please state what it was.

Mr. Gray: I again object. I desire to object to this entire line of examination. Your Honor will rule.
The Court: The objection is overruled and an exception ed for the defendants, to this question, and to all succeeding like

questions it is understood that a like objection is made, and
ruling, and the allowance of an exception.

(Exception noted for the defendants, individually and jo
by direction of the Court.)

By Mr. Roberts:

Q. Answer the question.
A. Forty cents.
Q. Please turn to July 25, 1917.
A. Yes.
Q. Have you it?
A. Yes.
Q. I would like to ask you if you have down there in you
handwriting a memorandum of what your concern paid for m
the Tageblatt on that day at the Philadelphia post office?
A. Yes sir.
Q. *What* that sum subsequently repaid to you by the Tag
for that amount of mailing money advanced?
A. Yes.
Q. How much was it?
A. Thirty-five cents.

Cross-examination.

By Mr. Gray:

Q. You did not pay these amounts yourself at all?
A. No sir.

304 NATHAN WISE, having been duly sworn, was examine
testified as follows:

By Mr. Roberts:

Q. Where are you employed?
A. United News Company.
Q. Do you know who paid the postage at the Philadelphia
Office between June 15th and September 10th, 1917, for the m
of the Philadelphia Tageblatt?
A. The United News Company paid it.
Q. Who actually hand-ed the money? Who did the paying
A. The cashier.
Q. At the Post Office?
A. Who handled the money?
Q. At the Post Office; who paid the money into the Post O
A. I did.
Q. You personally did?
A. Yes, sir.
Q. As the employee of the United News Company?
A. Yes, sir.
Q. And when you made that payment, what would you do?

COPY BOUND

A. I got a receipt for it, Government receipt.
Q. A Government receipt, and what did you do with the receipt?
A. Turned it over to the United News Company.
Q. To what person there?
A. The cashier.
Q. What is the cashier's name?
A. Mr. Engelmeyer, it was at times, and if there was nobody there sometimes I turned it over to whoever was cashier.
Q. Simply turned it in to whoever was in charge there?
A. Yes, sir, but I got the money from the United News Company to pay for the mail and I got a U. S. receipt for it.
Q. You got a U. S. receipt for it?
A. Yes, sir.
Q. And turned that in to the United News Company?
A. Yes, sir.

(No cross-examination.)

DANIEL J. O'CONNELL recalled.

By Mr. Roberts:

Q. From what data did you make the entries from which you read here a short time ago as to the amount paid for mailing?

Objected to.

Mr. Roberts: I will prove it in another way.

FRANK E. GETTY, having been duly sworn, was examined and testified as follows:

By Mr. Roberts:

Q. What is your employment?
A. Foreman, Central News.
Q. Foreman of the Central News?
A. Yes, sir.
Q. What is the Central News?
A. It is a newspaper and magazine corporation.
Q. Distributor?
A. Distributor.
Q. Did your concern have anything to do with the Philadelphia Tageblatt during the period from July 15 to September 10, 1917?
A. Distributing for them.
Q. You distributed for them?
A. Yes.
Q. What personally did you have to do with that distribution?
A. To start off, I sent the driver up to the Blatt and then brought them into the place and distributed them out to various dealers.
Q. Who distributed them; I mean who laid them out for the various drivers?
A. I did the most part of it myself.

CLOSE IN CENTER

Q. And was that a mattter of practice on every day between June 15 to September 10th?
A. Not every day, no, sir; mostly on Sunday.
Q. You mean you distributed more on Sunday than on weekdays?
A. Yes, more on Sunday.
Q. You turned them over to your drivers for delivery?
A. Over to the drivers and out to the news dealers.

(No cross-examination.)

307 WILLIAM G. WEISGERBER, having been duly sworn, was examined and testified as follows:

By Mr. Roberts:

Q. Where do you live?
A. 2321 North Second.
Q. What is your business?
A. News dealer.
Q. During the summer of 1917, between June 15th and September 10th, did you distribute any issues of the Philadelphia Tageblatt?
A. I did.
Q. Did you have them every day?
A. Every day.
Q. Every day during that period?
A. Yes, sir.
Q. I show you a bundle of Government exhibits, starting with 1 and ending with 86, not, however, consecutive in number, but being the same batch that I have shown to earlier witnesses, and given the numbers, and ask you what they are?
A. They are the Philadelphia Sonntagsblatt and the daily Blatt. They are the regular issues.
Q. They are the regular issues?
A. Yes, sir.
Q. Have you got your bills for Tageblatts delivered to you?
A. I have some, yes, sir.
Q. Where did you get your issues?
A. Through the news companies.
Q. What news companies?
308 A. Central News Company and United News Company.
Q. And you paid for them?
A. Paid for them, yes, sir.
Q. And have your receipted bills here?
A. The receipted bills, yes, sir.
Q. Covering the period in question?
A. Yes, sir.
Q. Here are some for August, 1917?
A. Some for Sunday.

Mr. Gray: He stated he got them and paid for them. The bills do not help us or hurt us.

By Mr. Roberts:

And you distributed them?
Yes, sir.

No cross examination.)

HARLES BURNSTEIN, having been duly sworn, was examined and ied as follows:

By Mr. Roberts:

Where do you live?
469 North Third.
What is your business?
Cigar store.
Do you sell papers?
Yes, sir.
During the summer of 1917, from July 15 to September 10, you distribute to customers and purchasers copies of the Philadelphia Tageblatt and Sonntagsblatt?
A. Yes, sir.
Q. Did you have them every day during the summer?
Yes, sir.
I show you this same bundle of papers that I showed the preng witness and ask you what they are?
Tageblatts.
And Sonntagsblatts?
Sonntagsblatts.

No cross examination.)

EGINALD SCHROEDER, having been duly sworn, was examined and ied as follows:

By Mr. Roberts:

Where do you live?
New York.
What is your business?
Newspaper man.
I want to know which newspaper man are you?
Editor.
Of what?
Of the New York Staats-Zeitung.
I show you Government Exhibits Nos. 35, 40 and 49, and I you if those are sheets of the Staats-Zeitung, of which you say are the editor, of the dates mentioned on each one of them?
That is the Sonntagsblatt (pointing to Exhibit 35.)
You said Sonntagsblatt. That means Sunday edition?
A. Yes, sir.
Q. And pointing to No. 40?
A. That is the morning edition.

Q. And pointing to No. 49?
A. Evening edition.
Q. And No. 35 is of the date September 2, 1917?
A. It is.
Q. No. 40 is of the date September 3, 1917?
A. It is.
Q. And No. 49 is of the date September 6, 1917?
A. Yes.
Q. I show you Government Exhibit No. 37 and call your attention to the German clipping at the top of that sheet.
A. Yes, sir.
Q. And ask you to also examine Government Exhibit No. 35, being the Sunday edition of the New York Staats-Zeitung, and say whether the matter appearing at the top of the Exhibit No. 39 is clipped from that edition of the Staats-Zeitung?

Mr. Gray: That is objected to, if your Honor pleases. In other words, if the two exhibits that have been referred to become evidential eventually in the course of the trial, they of course go in before this jury. The question of what they may be, or whether in this man's opinion one of them represents a clipping from the other, is not a matter, I take it, on which we need his help, and I do not think it is a proper question to ask him.

The Court: If they were both in a language with which the Jury was familiar, they could make the comparison.

311 Mr. Roberts: That would only show them whether the English words are identical. I am also asking a newspaper man to say whether now this is part of the same type work as that.

Mr. Gray: It is a different thing entirely.

The Court: You are showing him a pasted clipping.

Mr. Roberts: And asking him whether it is clipped from this column. I am not asking him to compare the articles at all.

Mr. Gray: To which I have made an objection.

Objection overruled. Exception noted for defendants by direction of the Court.

A. It is the same clipping.

By Mr. Roberts:

Q. It is clipped from your paper?
A. Evidently.
Q. Now I will show you Exhibit No. 40 and call your attention to an article headed "Sarrail's Truppen in Grossen Angriff," and I ask you to look also at Government Exhibit No. 42, and say whether the printed matter in Government Exhibit 42 was clipped from that edition of your paper?
A. Yes, sir.

Mr. Gray: Your Honor will allow my objection to cover each one of these questions?

The Court: Yes. Just make the entry upon the notes that it is

derstood that the same objection is made to any like questions addressed to the witness, the same ruling made and an exception owed.

2 By Mr. Roberts:

Q. Now I show you Government Exhibit No. 49 and Government hibit No. 51, Government Exhibit 49 being, as you say, a copy your paper?
A. Yes, sir.
Q. And Government Exhibit 51 being a clipping?
A. Yes, sir.
Q. And I ask you if the printed clipping in Government Exbit No. 51 was clipped from the Staats-Zeitung?
A. Yes, sir.

(No cross examination.)

EDWARD H. DITGES, having been duly sworn, was examined and tified as follows:

By Mr. Roberts:

Q. What is your position?
A. I am one of the editors of the Gazette.
Q. The Gazette?
A. Yes, Gazette Demokrat.
Q. Were you, in the summer of 1917, one of the editors of the iladelphia Demokrat?
A. Yes, sir.
Q. Did the Philadelphia Demokrat at that time have a news rvice?
A. Yes, sir.
Q. What service did it take?
A. International News.
3 Q. International News Service; and articles appearing in the Demokrat, derived from that service, acknowledged the ct in what way?
A. By a remark, "By International News Service."
Q. By a remark at the head of the article, showing where it came om, what service it came from?
A. Yes, sir; International News Service.
Q. That International News Service was not in German, was it?
A. No, sir.
Q. What did it come in?
A. English.
Q. And then what was your duty on that behalf?
A. To translate the dispatches.
Q. And the acknowledgment is placed in German as well as the ews dispatch?
A. Yes, sir.
Q. I mean the acknowledgment of the source?
A. At the head.

Q. You translated those articles to the best of your ability?
A. Yes, sir.
Q. And then put the caption over them and the acknowledgment of where they came from?
A. Yes, sir.
Q. I show you Government's Exhibits Nos. 3, 12, 16, 22 and 26, which purport to be sheets of the Philadelphia Demokrat and ask you to look at them and say whether they are sheets from the Philadelphia Demokrat of the dates in question?
A. Yes, sir, they are.
314 Q. I also show you Government Exhibits Nos. 7, 30, 45 and 54, and ask you the same question with regard to them; are they sheets from the Philadelphia Demokrat of the dates mentioned at the head of the paper in each case?
A. Yes, sir.
Q. Holding those before you, and taking first Exhibit No. 7, will you turn to an article appearing on page 1 of the last column, headed "Die Krisis in Deutschland"?

Mr. Gray: Are you still showing him his own paper?
Mr. Roberts: Still showing him his own paper.

By Mr. Roberts:

Q. And I am also asking you now to look at Government Exhibit No. 9, which is the clipping without a heading and ask you whether the printed matter in that clipping was clipped from your paper?

Mr. Gray: That is objected to, if your Honor please.
The Court: The objection is overruled and exception noted for the defendants. It may be entered that all like questions succeeding this are understood to be subject to the same objection, same ruling and the same allowance of exception.

Exception noted for defendants by direction of the Court.

By Mr. Roberts:

Q. You may answer, sir, if you will?
A. The printing is the same.
Q. I am not speaking now of the written heading.
A. The printing is the same.
Q. That clipping is from a copy of the Demokrat?
315 A. To all appearances.

Mr. Gray: In other words, it is printed in German and in the same type.
Mr. Roberts: Yes.

By Mr. Roberts:

Q. And the same use of lines, if I may use that phrase; the same spacing, I guess you would call it, exactly?
A. Yes, sir.

Q. Now I show you Government Exhibit No. 30, being in one of he issues of your paper which you have identified, and call your attention to an article on page 2, column 1, and also to Government Exhibit No. 32, which appears to be a clipping from some source, in German print, and ask you if they are identical? I am not speaking now of anything but the printing on them.

A. According to appearance it is the same.

Q. Now I will show you Government Exhibit No. 45, which you have identified as one of your papers, page 1, column 6, and also show you Government Exhibit No. 47, which appears to be a matter in German type starting with the words "Amsterdam."

A. As far as the first three paragraphs, its appearance is the same.

Q. Its appearance is identical, is it?

A. Yes, sir.

Q. Now I show you Government Exhibit No. 54, which is one of your papers which you have identified, and taking page 1, column 1, I show you in connection with it Government Exhibit No. 56, and ask you, as to the printed portion of Government Exhibit No. 56, whether it appears to be clipped from your paper?

316 A. Yes, sir, the appearance is the same.

Cross-examination.

By Mr. Gray:

Q. Your newspaper clips items from other papers also for the purpose of publication?

A. Yes, sir.

Q. And when you clip from other papers, you do not put it just as you have it; you change the article to suit yourself, do you not?

A. Yes, sir.

Q. That is the general practice, is it?

A. That is generally done.

Q. And put your headings on, whatever you think ought to be put on?

A. Yes, sir.

WILLIAM CONRAD, having been duly sworn, was examined and testified as follows:

By Mr. Roberts:

Q. I hand you a paper which appears to be the charter of the Philadelphia Tageblatt Publishing Association. That is the charter of your corporation, is it? Are you the secretary of the Philadelphia Tageblatt Publishing Association?

A. Yes, sir.

Q. Is that the charter of your corporation?

A. I do not know. I never saw that before.

Q. Did you ever see the minutes of the corporation before?

A. Yes, sir.

317 Q. Are these the minutes of the corporation? (Showing witness book.)

A. Yes, sir.
Q. Those are in your handwriting?
A. Yes, sir.
Q. And are all of them in your handwriting, are they?
A. Not all, no.
Q. Is the writing on page 75 yours?
A. Yes, sir.
Q. Is the writing on pages 80 and 81, both of these pages, you
A. Yes, sir.
Q. Is the writing on page 82 yours?
A. Yes, sir.
Q. And is the writing on page 86 yours?
A. Yes, sir.
Q. With reference to every one of the pages that I have refer
to, the writing is a part of the minutes of a meeting of the corpo
tion or of the directors?
A. Of the directors.
Q. In each case?
A. I do not know. I have to look first.
Q. Just look. We will start backwards. Here is the last one,
page 86; how about that?
A. This one here is the minutes from a meeting of the sto
holders.
Q. Was that an annual meeting?
A. No, semi.
318 Q. When is the annual meeting of the stockholders?
A. In February, mostly.
Q. Was there any held last February?
A. Yes, sir.
Q. Was there an election of officers at that time?
A. I guess not.
Q. When was the last election of officers held?
A. I guess it was in 1917.
Q. 1917?
A. Yes.
Q. Do these minutes cover that?
A. I suppose it does. Here is one of them, July, 1917.
Q. That is the one you just pointed me to, July 30th, and I as
you if that was the annual meeting and you said no.
A. No, that is a semi.
Q. Semi-annual meeting?
A. Yes, sir.
Q. Was there any election held there?
A. I do not know. I cannot remember; I guess it was.
Q. I can shorten it this way. I guess there will be no object
to it; if there is, do not answer until Mr. Gray has time to obj
Who is the president of the corporation?
A. Mr. Sheafer.
Q. And who was the president of the corporation between Ju
15th and September 10th, 1917?
A. Mr. Sheafer.
Q. That is the gentleman who sits over there?

A. Yes.

319 Q. And who was the treasurer of the corporation between June 15 and September 10, 1917?

A. Mr. Vogel.

Q. And who was the business manager of the corporation between June 15 and September 20, 1917?

A. Mr. Lemke.

Q. And you were the secretary?

A. Yes, sir.

Q. That is Mr. Max Lemke?

A. No, Mr. Herman Lemke.

Q. Mr. Herman Lemke, who sits here?

A. Yes.

Cross-examination.

By Mr. Gray:

Q. How long have you been secretary of the corporation?

A. About three years.

Q. Have you anything to do with the publication of the newspaper?

A. No, sir.

Q. What is your business?

A. Only to keep the minutes.

Q. Yes, but do you have some other business yourself, or way you make your living?

A. Oh, brewer.

Q. You are a brewer?

A. Brewery worker.

Q. You are a brewery worker?

A. Yes, sir.

320 Q. They would not let you do anything about running the paper?

A. No, sir.

Q. I mean, the fact that you are secretary does not give you any authority in connection with the paper at all?

A. No, sir.

Q. What is Mr. Vogel's business?

A. He is secretary of Local Union No. 5, United Brewery Workers.

Q. Does he have anything to do with running the paper?

A. No, sir.

Q. He has nothing to do with running the paper at all?

A. No, sir.

Q. What does Mr. Sheafer do?

A. He is the business agent of Local No. 132, Beer Drivers, United Brewery Workers.

Q. He was a beer driver?

A. Yes, sir.

Q. He has nothing to do with running a newspaper, has he?

A. No, sir.

Q. In other words, you three men who are officers of the corpo-

ration have other ways of making your living, and have nothi to do with the actual publication of the newspaper?

A. None whatsoever.

Q. Mr. Lemke is the business manager of the paper, is he not?

A. Yes, sir.

Q. Do you happen to know whether he has anything to do wi the actual publication of the paper itself?

A. Not that I know of.

Q. Do you know whether he has or not?

321 A. No, sir.

Q. You mean you do not know what he has to do?

A. I do not know, no, because I never was down there, ve seldom.

Q. How many stockholders do you have, about; do you know?

A. About? More than a thousand.

Q. What is the par value of each share of your stock?

A. $2.50.

Q. Two dollars and a half, is it not?

A. Yes, sir.

Q. How much stock is outstanding?

A. That is something I do not know.

Q. Do you know, in other words, what the value is of the sto that is outstanding and owned by different people?

A. I cannot tell you. I know of our Executive Board, that is I know.

Q. You mean what executive board?

A. The Executive Board of the United Brewery Workers of Ph adelphia.

Q. You mean they hold some stock?

A. Yes, sir.

Q. How much stock do they hold?

A. As much as I know, 18.

Q. 18 what?

A. 18 shares.

Q. 18 shares worth two dollars and a half a share?

A. Yes, sir.

Q. And they elect you to represent them, do they not?

322 A. Yes, sir.

Q. In other words, it is a condition of their holding sto that you shall be an officer and look after their interests, whatev their interests may be?

A. That is right.

Q. So that they have got as much as $45 invested?

A. Yes, sir.

Q. And they elect you as secretary; do you know how much sto is held by other people?

A. No, sir.

Q. Did you ever get a dividend on your stock?

A. No, sir.

Q. Do you know whether there have ever been any dividends pai since the corporation has been organized?

COPY BOUND

A. Not that I know.
Q. This paper that you looked at is not only a copy of the charter ut a copy of the constitution, is it not?
A. I do not. I never had that in my hands.

Mr. Gray: I believe he did not identify it, did he?
Mr. Roberts: No, he said he had never seen it.

Redirect examination.

By Mr. Roberts:

Q. This has been very amusing and interesting, no doubt, but et me ask you if you do not know a little more about it than you ave told Mr. Gray. Is not this paper, in fact, run by a couple of rewery drivers' or beer drivers' locals, to your knowledge?
A. No, sir, it is not run by them.
Q. It is not run by them?
23 A. No, sir.
Q. Is it not your personal knowledge that all of the stock f this company is held by one or two of these Beer Drivers' Locals?
A. No, sir.
Q. You say you do not know who does hold the stock. Who does wn it?
A. I never saw a book where the stock is in it.
Q. Who keeps the books of this concern?
A. I do not know. I only had this here book.
Q. You only had this minute book?
A. Yes, sir.
Q. Who takes the money?
A. The manager.
Q. The manager?
A. Yes, sir.
Q. And who gets it after the manager gets it?

Mr. Gray: Wait a minute. Do you mean of the paper or of the orporation?

By Mr. Roberts:

Q. Who gets the money? Who is manager; name him?
A. Mr. Lemke.
Q. He gets the money down at the office; then who gets it next?
A. Mr. Vogel.
Q. Then what does he do with it?
A. He puts in *on* bank.
Q. He puts it *on* bank and you say nobody ever gets a dividend ut of it?
A. I guess they are going to get it from the bank again.
324 Q. You think they are going to get it from the bank again?
A. Yes.
Q. Now then, does Mr. Vogel, to your knowledge, ever render any ccount of the money that he had?

LOSE IN CENTER

A. I do not understand that quite.

Q. You know, when you have a meeting, does the treasurer, M Vogel, ever give a report?

A. Oh, yes.

Q. Is it in your minutes?

A. No, sir. He has got a notebook of that.

Q. He has got a notebook on that?

A. Yes, sir.

Q. And you do not know where the money goes to after th

A. No, sir.

Q. Now I ask you again, is it not a fact that this paper is own and run in the interest of a couple of beer drivers' local unions, la unions?

A. No, sir. The brewery drivers of Philadelphia, they only the first mortgage on the building.

Q. Oh, the brewery drivers have the first mortgage on the bui ing?

A. Not the brewery drivers, the brewery workers. The Execut Board of the United Brewery Workers has the first mortgage on building, but no stocks except those——

Q. 18 shares?

A. 18 shares.

Q. How long have you been in the corporation?

325 A. I cannot tell exactly, but six or seven—oh, as the sec tary, you mean?

Q. Yes.

A. About three years.

Q. And how long have you been a stockholder?

A. I am not a stockholder direct. I am only a stockholder direct.

Q. Who holds the direct stock that makes you indirectly a sto holder?

A. The Joint Local Executive Board of the United Brew Workers.

Recross-examination.

By Mr. Gray:

Q. I do not want any confusion about this, and we want to g the Jury all the information we can. There are a number of va ous labor organizations who are interested in the newspaper?

A. Yes, sir.

Q. That is true, is it not?

A. Yes, sir.

Q. And the various managing boards of those labor organizatio whoever they may be, whether they are tilesetters or brewery worke or whoever they may be, hold a certain number of shares of sto the same as your representative board?

A. Yes, sir.

Q. Which has, I think you said, 18 shares of stock?

A. 18 shares, yes.

Q. And by reason of the fact that your representative
926 board holds 18 shares of stock, they have a say in the election of the officers?

A. Yes, sir.

Q. And you are really sent there as a representative of your Local?

A. That is right.

Q. So that when you say that you are not a stockholder directly, but are indirectly, that is what you mean?

A. That is what I mean.

Q. So that there are other labor organizations that hold stock, and I suppose they send a representative to the various stockholders' meetings for the purpose of voicing their sentiments?

A. Yes, sir.

Mr. Roberts: How is it that he knows it when you ask him and does not know it when I asked him? I asked him those questions.

Mr. Gray: No, you did not ask him anything of the kind. Your suggestion was that it was all held by the brewery workers and I am only developing the fact. I do not think this man is highly intelligent myself. I do not think he is thoroughly familiar with what is done.

The Court: The confusion arose as to the word drivers. You were confusing the drivers and workmen.

Mr. Roberts: He corrected me on that.

Mr. Gray: There is no confusion at all and will not be any confusion. We want to throw all the light we can on the subject. Now that Mr. Roberts is through, we will resume.

By Mr. Gray:

Q. You cannot tell us how many stockholders there are altogether?

927 A. No, sir.

Q. And you do not know of any list of stockholders?

A. No, sir.

Q. And you cannot tell us what different organizations are interested in the holding of the stock?

A. I know some of them.

Q. Tell us some of them.

A. For instance, the Typographical No. 1.

Q. Typographical Union No. 1?

A. No. 1.

Q. Tell us all you can think of.

A. The United German Trades.

Q. The United German Trades; yes?

A. That is all I know.

Q. That is all you can think of?

A. Yes.

Q. Besides the breweries, I think you mentioned the brewery workers?

A. Brewery workers.
Q. Brewery drivers, is it?
A. That is, the Joint Local Executive Board is composed of drivers, brewers, engineers and firemen.
Q. And I think you said to Mr. Roberts that when Mr. Le gets the money—I do not know whether you did or not, if did not I am asking you—he turns it over to Mr. Vogel, the t urer?
A. Yes, if he has some left.
Q. If he has any left?
328 A. Yes.
Q. And then Mr. Vogel pays the bills, I suppose, or he not?
A. I do not know, I think Mr. Lemke pays the bills.
Q. I do not mean the bills of the newspaper. Mr. Lemke business manager, as I understand it, pays the bills in connec with the publication of the newspaper first, and if there is money left after that, he turns it over to Mr. Vogel?
A. That is right.
Q. Now Mr. Vogel pays the bills of the Association, does he
A. Yes, sir.
Q. Interest on the mortgage, I suppose, and if there has money been loaned to the Association, he pays that?
A. Yes.
Q. Or any debts of the Association itself?
A. Yes, sir.
Q. And when you say there is no dividend, you mean there never been anything left, after the payment of all those thing distribute among any of the stockholders?
A. That is right.
Q. That is true, is it not?
A. Yes, sir.

Mr. Roberts: I am ashamed to confess, if your Honor pl that we have broken down. I went so much faster with
329 witness than I had hoped that I have but a single witne any materiality left, and I told him to be be here at 2 o'cl

At 12:30 p. m. a recess was taken until 2 o'clock p. m.

330 2 p. r

Present: Parties as before noted.

LEONARD A. PECK, having been duly sworn, was examined testified as follows:

By Mr. Roberts:

Q. You reside in Philadelphia?
A. Yes, sir.
Q. Have you been at any time a teacher?

A. Yes, sir.
Q. Where?
A. In the Episcopal Academy.
Q. What did you teach there?
A. German.
Q. What length of time have you had a knowledge of the German language, and where did you acquire it?
A. I learned German as a child, and then—oh, I guess I forgot it, and really had to learn it over. But I have always been able to read it almost since I could read English. I don't suppose I have been speaking it for more than the last ten or twelve years.
Q. The last ten or twelve years you have spoken it as well as read it?
A. Yes, sir.
Q. Have you translated German for any purpose?
A. Yes, sir.
Q. Except for the purpose of this trial?
A. Of course, as a teacher. Yes; I have done other translating, too, professionally.
Q. At the Government's request have you made translations of certain articles that were submitted to you?
A. Yes, sir.
Q. I show you Government's Exhibit 1, and call your attention to an article on page 1, column 3, headed "The Crisis," and ask you if you have made a translation and had it typewritten of that article?
A. Yes, sir.
Q. Have you carefully compared it?
A. Yes, sir.
Q. I notice that there are some corrections of the typewriting. Are they in your handwriting?
A. They are in my handwriting.
Q. Those were made when you compared the typewriting with your original translation to see if the typewriter had correctly copied it?
A. Yes, sir. Some mistakes or improvements which I thought——
Q. Ought to be made?
A. Yes, sir. Mostly typographical. There are some others.
Q. That is marked Government's Exhibit No. 2. That is a correct translation?
A. Yes, sir.
Q. Now, I show you Government's Exhibit No. 3, which is the Philadelphia Demokrat of 23rd June, 1917, or a sheet thereof, and call your attention on page 1, column 2, to certain head lines, and then a dispatch of the International News Service, so-called, starting dated London, June 23rd. Have you made a correct translation of the article shown you in Government's Exhibit 3?
A. Yes, sir.
Q. Is Government's Exhibit 4, which I now show you, the typewritten transcript of that translation?

A. Yes, sir.
Q. And you have compared that since it was made?
A. Yes, sir.
Q. And are prepared to stand on it as correct?
A. Yes, sir.
Q. I show you likewise Government's Exhibit 5, which I think has been sufficiently identified in previous questions, and call your attention on page 3, column 3, to an article headed "Bestätigt." Have you made a correct translation of that?
A. Yes, sir.
Q. Is the typewritten transcript of your translation Government's Exhibit 6, which I now show you?
A. Yes, sir.
Q. And been corrected in your own pen handwriting?
A. Yes, sir.
Q. After comparison with the original?
A. Yes, sir.
Q. And that is a correct translation?
A. Yes, sir.
334 Q. I also show you Government's Exhibit No. 7, which is a sheet from the Philadelphia Demokrat of 9th July, 1917.

Mr. Gray: I wonder if I can help you to shorten it, Mr. Roberts. You have got a number of exhibits there that are translations, and if Mr. Peck has examined the various exhibits which were referred to this morning, in the way of newspapers, and the various exhibits that he has in the way of translations, I will not object if you ask him the general question.
Mr. Roberts: I will ask him the general question, then.
Mr. Gray: Understand, I am not conceding the translations are correct.
Mr. Roberts: No. You may want to contradict them.
Mr. Gray: Or not conceding the right to use them. But you may ask him the question instead of asking separate questions as to all of the exhibits.
Mr. Roberts: That is very satisfactory, and very fair.
Mr. Gray: It will save some time.
Mr. Roberts: It will. It will save at least a half hour.

By Mr. Roberts:

Q. Mr. Rosenbaum, of counsel in this case, has pasted on these various Government exhibits, and the official stenographer has used the labels that he has pasted, numbering them, all throughout this case. Since those Government exhibits were numbered in that fashion, either Tageblatts or Philadelphia Demokrats or the
335 Staats Zeitung of New York or copy slips, so-called, have you since then again compared your translation—since they were numbered?
A. Yes, sir.
Q. And the Government exhibits which bear the next serial num-

ach case after the German text which appears in the German
whatever it may be, is your translation?
es, sir.
ince it was numbered, compared and found by you to still be
t translation?
es, sir.
lthough the translation was made before these were num-

es, sir.
o that as regards other exhibits here, which consist of an
in a German newspaper, whether the Tageblatt or the Demo-
the Staats Zeitung, or these so-called copy slips, which con-
erman text pasted on a sheet of paper——
have not compared those.
he copy slips?
o, sir. I was not asked to do that.
et us get that straightened out.

Gray: Why not put the one question to cover all of those ex-
e copy slips?
Roberts: Everything except the copy slips.
Court: Mr. Roberts, the evidence already is that these slips
are identical with something else?
Mr. Roberts: That is true, sir.
The Court: And if he has translated the other and the
ranslation is correct——
Roberts: That would be correct as to the copy slip, except
s elided from the copy slip.
Witness: I have not done anything on the copy slips.

By Mr. Roberts:

Except translate them?
No; I have not translated them.
You have translated the original?
Yes, sir.

Roberts: Then, I ought to change my question.

By Mr. Roberts:

As to the articles which appear in the Demokrat, the Staats
g and the Tageblatt, which have been marked on the ex-
you have compared your translations since they and the trans-
s were numbered?
Yes, sir.
And your translation in each case bears the next serial number
thing you have translated? That is right, is it?
Yes, sir.
And it is correct?
Yes, sir.
Now, I merely want to get a physical fact with regard to Gov-
nt's Exhibit No. 9, which is a copy slip, so-called, and which

you have before you, and the Philadelphia Tageblatt, being
337 Government's Exhibit No. 5, which I now lay before you.
I simply want to know the physical fact, whether the text which appears in the Tageblatt of July 10th, 1917, which is Government's Exhibit No. 5, in the article "Beslatigt" is the same text as in the copy slip, Government's Exhibit No. 9, with the exception of what happened to be struck out with a pen on the copy slip?

Mr. Gray: That is objected to, because if these papers become admissible in evidence they will speak for themselves.

Mr. Roberts: It is a matter of mere mechanical convenience, sir. I am not trying to put them in evidence now by any indirection. I am not going into the text. I am merely trying to help the jury, which will have to pick out a lot of German text, with testimony.

The Court: If they were in English the jury could make the comparison themselves. Inasmuch as they are in a language which may be one with which the members of the jury are not familiar, I will permit the fact to go in evidence. I will overrule the objection and give the defendants an exception.

(Exception noted for the defendants individually and jointly, by direction of the court.)

A. I will have to compare them.

By Mr. Roberts:

Q. Go ahead.

A. (After comparing.) Yes, sir.

Q. Now, I show you the Philadelphia Tageblatt of 22nd
338 August, 1917, being Government's Exhibit No. 28, and on page 5, column 2, I call your attention to an article called "Kreig der Reichen." I show you Government's Exhibit No. 32, which is a so-called copy slip, on which certain words are inserted. The first thing I notice is that a word is struck out in the third line of the copy slip. Do you find that word stricken out in the article in the Tageblatt, or do you find that that word does not appear in the article in the Tageblatt?

A. That is right. It is not in the Tageblatt.

Q. The next one that I notice is a word in the eighth line of the copy slip, which is a three-syllable word, and I notice the last two syllables are stricken out and in the margin a substitution made of another two final syllables. Do you see what I mean?

A. Yes, sir. I see it in the slip.

Q. Will you please look at the article in the Tageblatt and see whether in the Tageblatt the correction is followed or if the article appears in exactly the same words as the original German type of the copy slip?

A. The correction is followed.

Q. I notice in the tenth line of the copy slip a similar thing occurs, namely, that a word of several syllables has the latter syllables struck out and an amendation made in ink on the margin. In

rticle does the matter appear as amended by the written matter
e copy slip or as originally printed in the German text?
A. As amended.
Q. I notice in the third paragraph, the fourth line, certain words are struck out in the copy slip. Do they appear in rticle as printed or are they left out in the article as printed?
They are omitted from the article as printed.
In paragraph 4 of the copy slip, in the fourth and fifth lines, are certain words struck out, and there appears also to have some pen written word, either inserted or added, I cannot make which. Can you tell me with reference to the article in the blatt whether the changes indicated on the copy slip appear in Tageblatt article or whether it is as the original German type ed it without change?
It follows the correction.
I show you the Philadelphia Tageblatt of Monday, 3rd Sep-er, 1917, which is Government's Exhibit No. 33, and call your tion to page 4, column 4, in which there appears an article ed "Meitere Sinfchränfungen." I show you Government's Ex- No. 37, which contains two copy slips, the upper one of which interested in. I notice that the heading of that matter has changed by striking out three words with a pen. How does it ar in the Tageblatt? Were those words in or out?
The words are omitted.

r. Gray: May my objection apply to all these same matters, have I the benefit of your Honor's ruling? It is the same question as before.
Mr. Roberts: I may be transgressing there. I believe that the jury could see whether the three words were stricken out ot, because they are right at the top. Perhaps I ought to with- that question.
he Court: I do not understand the objection goes to the form of question, but to the substance. Suppose you state your ob- ion, Mr. Gray.
Ir. Gray: I can state it very briefly. My objection is that if e exhibits are matters which shall become evidential, and are for consideration of the jury, that the comparison between them is them to make and not for this witness to make.
he Court: I understood that. The objection is overruled for reasons before stated, and an exception is granted to the defend-, and it is understood that like questions addressed to the wit- are taken subject to the same objection, the same ruling, and allowance of a like exception.

Exception noted for the defendants individually and jointly, by ction of the court.)

By Mr. Roberts:

Q. I notice in that copy slip that there is something written along- the end of the extract, or the matter that is pasted on the slip.

Will you tell me whether in the Tageblatt article the German ty
of the matter only appears or whether the handwriting addition a
pears in the Tageblatt article?

A. It follows the handwriting.

341 Q. I show you, if you please, Government's exhibit N
38, page 1, column 6, being the Philadelphia Tageblatt of t
4th September, 1917, and direct your attention to an article whi
appears there headed "Sarrails Truppen geichlagen," and I sh
you Government's Exhibit No. 42, which is a copy slip——

Mr. Roberts: I won't press that, if your Honor please, becaus
comparison of the headings will show the distinction, and I do n
think I have any right to trespass. Anyone can see where t
differences are there. It is not so down in the text.

Cross-examination.

By Mr. Gray:

Q. You make mistakes in your translations?

A. You can see I have made corrections there, yes, sir.

Q. You consider—and I am not either sarcastic, nor do I inte
to flatter; I only want the fact; you consider that you are an a
translator of the German language into English?

A. Why, I can translate from German to English, yes, sir.

Q. And you consider that you are to be classed among the a
men in that line?

A. Why, yes, I think so.

Q. And less able men are, of course, as a matter of course, m
likely to make errors than you? It is a matter of argument, I c
cede, but it is a fact, is it not? It is a corrollary that follows ne
sarily?

A. Why, of course. I will grant that.

342 Q. And, as a matter of fact, you made previous tra
lations of these articles, which were used in court, and wh
you said were correct then, and you have since corrected them, h
you not?

A. Every time I look through those articles I find things tha
think I can improve.

By Mr. Roberts:

Q. That you think you can improve?

A. Yes, sir; improve.

By Mr. Gray:

Q. In other words, a translation may be made from the Gern
into the English, a proper translation, by the use of certain E
lish words, but on a careful examination of your translation y
can find that it might be better, or you do find that it might
better, to use other English words, or other English expressio
which you think is an improvement upon the translation?

A. To get the meaning exactly, yes, sir.
Q. All of which, of course, requires you to go back over your work——
A. Again and again.
Q. Again and again?
A. Yes, sir.

Mr. Roberts: I desire to offer in evidence, with reference to
343 Count 1, Sub-Section A, Government's Exhibit No. 1, being the Tageblatt of the 24th June, 1917; Government's Exhibit No. 2, being the translation thereof; Government's Exhibit No. 3, being the Philadelphia Demokrat of the 23rd June, 1917; and Government's Exhibit No. 4, being the translation thereof, stating to your Honor that the article "The Crisis" which is counted upon in that Count, and the translation, and the source from which it came, the German Demokrat, are shown by the English translation, which is similar, and a comparison of the English with the German text.

Mr. Gray: The matters are objected to. Let me take, if your Honor pleases, the four component parts of my friend's offer, and state first my objection to the Exhibit 1, which purports to be the Philadelphia Sonnstageblatt for June 24th, 1917. I might state as the first ground of my objection that there is no identification of this paper, and no connection shown between this paper and any of the defendants. Your Honor will let me pause there and have you determine whether my objection is good upon that ground, because of other matters that are separate and distinct, that I prefer to call your attention to afterwards if necessary.

The Court: You desire a ruling upon that?

Mr. Gray: If your Honor pleases.

The Court: I think there is evidence here. The question of whether or not these defendants, and which of them, are connected with the publication is for the jury. I therefore overrule your objection upon that ground.

344 Mr. Gray: And give the defendants the benefit of an exception?

The Court: Well——

Mr. Gray: Your Honor will do that later. I understand.

The Court: An exception may be noted for the defendants.

(Exception noted for the defendants individually and jointly by direction of the court.)

Mr. Gray: Will your Honor again let me call your attention, in pressing that portion of the objection, that there has been no connection shown between this exhibit and the defendants, to the Government's testimony to the effect—now, this is a news article—to the Government's testimony to the effect that Dr. Darkow, who had charge of the news articles, was not there on Saturday, and, therefore, of course, did not prepare the news articles that came in for the Sunday paper? Now, there is no connection shown between any of the other defendants, and the only connection shown with the de-

fendant Dr. Darkow is that he had charge of the editing of th
foreign news articles. This is a foreign news article. It is publishe
on a Sunday. The Government has established by several of i
witnesses that Dr. Darkow had nothing to do practically—that
the effect of their testimony—with the publication of news articles
the Sunday paper.

The Court: Yes; but you have lost sight, I think, for t
345 moment, of the fact that there is a Count here for conspirac

Mr. Gray: I have not lost sight of it, sir.

The Court: That these defendants were getting together in the
publications, and the jury can find from all the evidence to wh
extent any of them was connected with any particular publicati
or any particular article, and to what extent they were so connecte

Mr. Gray: But, if your Honor pleases, that conspiracy Cou
charges these defendants with conspiring with each other. No
there is no evidence whatsoever that the act of publication of t
article in the Sunday paper was the act of anyone of the conspirato
that are named. They are not even charged in the indictment wi
conspiring with other persons unnamed.

The Court: I doubt the propriety of my discussing the eviden

Mr. Gray: I do not ask your Honor to discuss it, but I only c
your Honor's attention to my thought, which might cause you
change your ruling. That is all. If your Honor is still of t
opinion, then I simply ask for a ruling and ask for the benefit of
exception.

The Court: I am still of that opinion.

(Exception noted for the defendants individually and jointly,
direction of the court.)

Mr. Gray: Now, if your Honor pleases, I object to the a
346 mission of this newspaper, this exhibit, upon another groun

Your Honor has determined that its identity and its co
nection with the defendants has been established. The Governme
proved, then, although I believe that they had not proved the identi
of the papers, but your Honor now ruling that they have proved
the Government proved that this exhibit came from the defendan
taken from them by the power of a search warrant issued by t
United States Government. I content that to produce this paper n
and to permit it to be used in evidence as against these defendants
a violation of one of the highest rights that a defendant has, a
that is not to be compelled to furnish evidence against himself.
object to it for that reason.

The Court: That question will remain in the case until the en
and I will overrule that ground of objection and give you an exce
tion.

(Exception noted for the defendants individually and jointly,
direction of the court.)

Mr. Gray: I would say frankly that, of course, having object
generally—I think I did; if not, I do now object generally to t
admission of the four exhibits which are classified in one offer by t

District Attorney. Your Honor will rule on that objection. In other words, the translation itself, unless the testimony of the witness that he made mistakes, and I do not count on that—the
347 translation itself probably follows the natural course of the original exhibit, but they have been offered together, and I have made my objections heretofore to Exhibit No. 1, because of the fact that the other exhibits did not come under the classification. Now, I desire to object to the offer that my friend makes as a whole, if your Honor pleases.

The Court: The objection is overruled and an exception noted for the defendants.

(Exception noted for the defendants individually and jointly, by direction of the court.)

Mr. Gray: Now, if your Honor pleases, Exhibit No. 3 is a single page of the Philadelphia Demokrat of Saturday, June 23rd, 1917. I object to it first because there has been absolutely no connection shown—and I bear in mind the testimony of the witness who was employed by the Philadelphia Demokrat—between this paper, or this exhibit, and the issue that we now have to try, or as between this exhibit and Exhibit No. 1.

The Court: In order that I can follow you, Mr. Gray, when you say that you have that testimony in mind, is the testimony to which you refer the statement made by him in which he identified the slip——

Mr. Roberts: There is no slip in this case.

Mr. Gray: No. He identified the newspaper article.

Mr. Roberts: He identified the newspaper and the article as an article that was translated by somebody in their office, pre-
348 sumably by him, from the English, and was put into German in the office of this newspaper, and I shall ask, of course, the inference that no two people translate the same English article into the identical German except for certain elisions and changes.

Mr. Gray: Let me elaborate slightly upon what Mr. Roberts has said by calling your Honor's attention to the fact that the witness, of course, simply testified that this was a part of the Philadelphia Demokrat, and identified a certain article as contained therein. Now, there is no connection shown——

The Court: What is the date of the Demokrat?

Mr. Gray: The 23rd day of June.

Mr. Roberts: The evening of the 23rd. The article is of the morning of the 24th.

The Court: The objection is overruled and an exception noted for the defendants.

(Exception noted for the defendants individually and jointly, by direction of the court.)

Mr. Gray: I object to it further, if your Honor pleases, because the Government, in offering Exhibit No. 3, does not offer the Philadelphia Demokrat of Saturday, the 23rd of June, 1917, but offers but one page, which seems to have been torn or cut therefrom.

Mr. Roberts: And identified as a part of the paper of that da
Mr. Gray: That is true.
349 The Court: What we are interested in is the artic
copy of which appeared; not the whole paper. That
tion is for that reason overruled, and an exception noted fo
defendants.

(Exception noted for the defendants individually and jointl
direction of the court.)

Mr. Gray: That is stating my objection, but it may save our
if I can understand your Honor's ruling as to the objection t
paper itself. That is, the Sonnstageblatt. I understand
Honor's ruling to be that that newspaper may be admitted in
dence notwithstanding the fact that there is no definite conne
with any of the individual defendants. I do not want to be cap
The Court: You are appealing to me to decide a question
the jury must decide.
Mr. Gray: Oh, no. Pardon me, sir. I am asking whether
Honor's ruling, as to Exhibit 1, as to the fact—because the Go
ment has offered no evidence to connect it with the defendant
the slightest——
Mr. Roberts: That is a conclusion.
Mr. Gray: Let me use the word direct, then. The Govern
has offered no direct evidence, but has simply established the
nection of the various defendants with either the Philadelphia
blatt Publishing Association or the active management and co
of the newspaper itself, but the Government has in no
350 established the individual connection of any of the de
ants with the article which is made the basis of Count
the indictment, and which is the foundation of Exhibit No. 1.
I am only asking because, as your Honor appreciates I have tri
shorten this as much as possible, if your Honor's ruling means
the simple fact that that paper is a Tageblatt, either a Tageblatt
Sonnstageblatt, that that in itself is sufficient to admit it in evid
notwithstanding the fact that there is no individual connection
between the defendants and the paper, then in the future as to
exhibits I will simply state my objection and not argue it an
your Honor rule, because I am ready to concede that if your H
takes that position I have no stronger position in stating my
tion than I had with this particular exhibit No. 1 as to any o
other exhibits, and I won't waste time arguing it. You see, h
got some few exhibits. I will save more time by discussing it
than by raising the question at that point.
The Court: As I have stated before, inasmuch as I take it to
jury question I doubt the propriety of an expression from the
in the way of a recapitulation of what inferences might be d
from the evidence. My ruling is that there is evidence here to
the jury, from which, if credited by them, they can draw the i
ence of participation, and of course they are at equal liberty to
the inference of non-participation. The evidence is for t

351 and the question is for them, and my only ruling is that there is evidence for them to consider, and their judgment controls the finding, not the judgment of the trial judge.

Mr. Gray: My thought is, sir, that the Government must go to the extent of either establishing the fact that one of the individual defendants was responsible for this particular article, in order that he might come within the allegations of the Counts from 1 to 8, or that the Government must, in order to bring him within the allegation of Count 9, which is the conspiracy count, establish the publication of this article as the individual act of either himself or one of his co-conspirators. Now, the Government has not done that. It certainly has not done it with reference to this article, and has not attempted to do it. That is the reason I suggested that I was entitled to know——

The Court: Of course, if there is any discrimination as among the several counts, we can pass upon that on an objection to testimony. If it is admissible in support of any one of the counts it is admissible.

Mr. Gray: There is not any doubt about that. But to make it admissible under the conspiracy count certainly it has got to be shown as either the act of the defendant or the act of one of his co-conspirators. I take it that your Honor does not want to express yourself any further. So we will await the District Attorney's further question.

352 The Court: I think it would be better not to. It being a jury question, it ought to go to them untrammeled by any expression of opinion from anyone else, and let the counsel discuss it and make whatever comments——

Mr. Gray: I think your Honor misunderstands me entirely. I am going to re-state the proposition, because I think you do not, and because I still think I can save time. I have made an objection, and your Honor has overruled my objection. If your Honor overrules that objection because of the fact that you believe that newspaper to be admissible under the evidence that the Government has introduced, bearing in mind the fact that they have not connected it by direct testimony with any individual, then I can not state my objection any stronger with reference to the other exhibits, and when they are offered I will simply state my objection and not bother arguing it before your Honor. If your Honor has any other reasons in the matter, then of course it may not apply to the other exception.

The Court: No. In one phase of it that covers it, because the view I take is that the jury are to find "here is a publication," which, of course, proves itself, and then find whether or not these defendants, or which of them, by the evidence is connected with that publication, and that is a jury question. There is evidence in the case from which they can make the finding.

353 Mr. Gray: I grasp your Honor's ruling now. That is the point exactly.

Mr. Roberts: Now, if your Honor pleases, I offer in evidence Exhibits 5, 6, 7, 8 and 9, all of them related to the overt act mentioned

in brackets in count 1 as overt act B, these constituting an editio
of the Philadelphia Tageblatt of 10th of July, 1917; the translati
of the article therein called "Bestatigt"; a copy of the Philadelphi
Demokrat of 9th July, 1917; a translation of the article therei
and a copy slip, as to which there is evidence, I will say, as to whe
it came from, to wit, the Philadelphia Demokrat, of the date i
question, with certain markings on it in handwriting, which h
been identified.

Mr. Gray: These verious exhibits, constituting a part of the D
trict Attorney's offer, are objected to collectively, as they have be
offered, and are objected to individually, for the reason that I ha
state in objecting to the exhibits 1 to 4, inclusive.

The Court: The same ruling will be noted and the same exceptio
allowed.

(Exception noted for the defendants individually and jointly, b
direction of the court.)

Mr. Roberts: If your Honor pleases, I offer in evidence in a gro
Government's Exhibits 10, 11, 12, and 13, all with referen
354 to that portion of Count 1 which is designated under the su
head "C," being the Philadelphia Tageblatt of July 20
1917, and a translation of the article appearing therein under t
caption "Drunter U Druber"; the Philadelphia Demokrat of 19
July, 1917, the day previous, and a translation of an article simi
in many respects, as will appear upon inspection, to the same tra
lation of it.

Mr. Gray: I desire to object to each of these exhibits in the sa
manner as I have to the preceding ones.

The Court: The same ruling will be entered, and a like exceptio

(Exception noted for the defendants, individually and jointly, b
direction of the court.)

Mr. Roberts: If your Honor pleases, I offer in evidence in a gro
Government's Exhibits 14, 15, 16 and 17, all with relation to th
Sub-Heading of Count 1 which is designated "D.," being the Phi
delphia Tageblatt of 25th July, 1917, and a translation of an arti
therein appearing headed "Vas Vasington hofft"; together with
portion of the Philadelphia Demokrat of 24th July, 1917, and
translation thereof, also calling attention, with regard to the Su
Heading under Count 1 designated as "E," to an article appearin
in Government's Exhibit No. 14, which is the 25th July, 1917 e
tion of the Tageblatt on page 5, column 4, of an article entitl
"Servien," and a similar article to which appears on page 2, colum
3, of the same mentioned edition of the Demokrat, and tra
355 lations of the two articles respectively, those covering Su
Heads D and E of the first Count of the indictment.

Mr. Gray: I desire to object to each of these exhibits in the sa
manner as I have to the preceding ones.

The Court: The same ruling will be noted and a like exceptio
entered.

(Exception noted for the defendants individually and jointly, by ection of the court.)

Mr. Roberts: If your Honor pleases, I offer as one group Govern-nt's Exhibits No. 20, 21, 22 and 23, being the issue of the Phila-phia Tageblatt of the 14th of August, 1917; a translation of an icle therein appearing and marked therein headed "Ein In-m"; a sheet of the Philadelphia Demokrat of the previous evening, 13th August, 1917; and an article of the same import on page olumn 2, thereof, with translation thereof; that all being offered der Sub-Section "F" of Count 1 of the indictment.

Mr. Gray: I desire to object to each of these exhibits in the same nner as I have the preceding ones.

The Court: The same ruling will be entered, and a like exception ed.

(Exception noted for the defendants individually and jointly, by ection of the court.)

Mr. Roberts: I offer in evidence, if your Honor pleases, in a group, under Sub-Section G of Count 1, four exhibits, being Government's Exhibits 24, 25, 26 and 27, being an article in the Philadelphia Tageblatt of 16th August, 1917, headed ichts Sicheres"; a translation thereof; a sheet from the Phila-phia Demokrat of the preceding day, August 15th, containing the ne text, and a translation thereof.

Mr. Gray: I desire to object to each of these exhibits in the same nner as I have the preceding ones.

The Court: The same ruling will be entered, and a like exception ted.

(Exception noted for the defendants individually and jointly by ection of the court.)

Mr. Roberts: I offer in evidence, if your Honor pleases, under Sub-eading H of Count 1 five exhibits, being Government's Exhibits s. 28, 29, 30, 31 and 32, being the Philadelphia Tageblatt of 22nd ugust, 1917, containing amongst other things an article entitled Krieg der Reichen"; a translation thereof; a sheet of the Philadel-hia Demokrat of the preceding evening, the 21st of August, 1917, ntaining a similar article; a translation thereof; and a copy slip entified by several of the witnesses, being Government's Exhibit o. 32.

Mr. Gray: I desire to object to each of these exhibits in the same anner as I have the preceding ones.

The Court: The same ruling will be entered, and a like exception ted.

(Exception noted for the defendants individually and jointly, by direction of the court.)

Mr. Roberts: I offer in evidence, if your Honor pleases, in sup-rt of Sub-Heading I of the first Count of the Indictment Govern-

ment's Exhibits Nos. 33, 34, 35, 36 and 37, being the issue of th Philadelphia Tageblatt of 3rd September, 1917, with an artic therein appearing headed "Meitere Sinfchränfunger," together wit a sheet from the Staats Zeitung of New York of the 2nd of Se tember, 1917, containing an article with similiar wording, and copy slip, which is Government's Exhibit No. 37, containing certa handwriting thereon.

Mr. Gray: I desire to object to each of these exhibits in the sam manner as I have the preceding ones.

The Court: The same ruling will be entered and a like exceptio noted.

(Exception noted for the defendants individually and jointly, b direction of the court.)

Mr. Roberts: I offer in evidence, if your Honor pleases, in su port of Sub-Heading J of Count 1 of the Indictment five exhibi being Government's Exhibits Nos. 38, 39, 40, 41 and 42, consistin of the Philadelphia Tageblatt of 4th September, 1917, containi an article headed "Sarrailis Truppen geichlagen," with a trans tion thereof; a sheet from a copy of the New York Staats Zeitung 3rd September, 1917, containing a similar article, with a differe heading; a translation thereof; and a copy slip, said to ha
358 been clipped from the said Staats Zeitung edition, with c tain hand written changes thereon.

Mr. Gray: I desire to object to each of these exhibits in the sam manner as the preceding ones.

The Court: The same ruling will be entered and a like exceptio noted.

(Exception noted for the defendants individually and jointly, b direction of the court.)

Mr. Roberts: I also offer in evidence, if your Honor pleas in support of Sub-Heading K of Count 1 of the Indictment, Gover ment's Exhibits Nos. 43, 44, 45, 46 and 47, consisting of the Phil delphia Tageblatt of 7th September, 1917, containing an artic headed "For Political Reform"—that is the translation of it; translation thereof; the Philadelphia Demokrat of the 6th Septemb 1917, containing an article with similar wording; the translation that; and a copy slip, which is identified as Government's Exhibit N 47, containing certain matters stricken out from the copy; and al in addition Government's Exhibits Nos. 48, 49, 50 and 51, whic taken together with Exhibit No. 43, have to do with Sub-Headi L of Count 1, referring to an article in the Tageblatt of 7th, Septe ber, 1917, page 4, column 3, headed "What Does This Mean?" that is the translation; the translation of this article; a copy of t New York Staats Zeitung of the previous day, together with a tra lation of the article, and a copy slip relating to text said to
359 taken from that article.

Mr. Gray: I desire to object to each of these exhibits in th same manner as I have to the preceding ones.

The Court: The same ruling will be entered and a like exception ed.

(Exception noted for the defendants individually and jointly, by ection of the court.)

Mr. Roberts: With regard to Sub-Head M of Count 1 I offer in dence Government's Exhibits Nos. 52, 53, 54, 55 and 56, consist- of the Philadelphia Tageblatt of 8th, September, 1917, and a nslation of an article therein appearing which is, translated, eady For the Fray"; the Philadelphia Demokrat of 7th Septem- , 1917, containing a similar article; a translation thereof; and a y slip said to have been taken from the Philadelphia Demokrat ve mentioned, with certain changes and notations thereon.

Mr. Gray: I desire to object to these exhibits in the same manner he preceding ones.

The Court: The same ruling will be entered and a like exception ed.

(Exception noted for the defendants individually and jointly, by ection of the court.)

Mr. Roberts: I offer in evidence, if your Honor pleases, in support Count 2 of the Indictment, the Philadelphia Tageblatt of 4th y, 1917, containing an editorial mentioned in Count 2, together with a translation thereof.

Mr. Gray: I desire to object to this exhibit in the same manner as I have to the preceding ones.

The Court: The same ruling will be entered and a like exception ted.

(Exception noted for the defendants individually and jointly, by ection of the court.)

Mr. Roberts: I also offer in evidence, if the Court pleases, in sup- rt of Count 3 Government's Exhibits Nos. 59 and 60, being the iladelphia Tageblatt of the 6th August, 1917, and a translation of article therein appearing headed "Yankee Bluff."

Mr. Gray: I desire to object to these exhibits in the same manner I have to the preceding ones.

The Court: The same ruling will be entered and a like exception ted.

(Exception noted for the defendants individually and jointly, by ection of the court.)

Mr. Roberts: I also offer in evidence, if your Honor pleases, in sup- rt of Count 4, Government's Exhibits Nos. 61 and 62, being the iladelphia Tageblatt of 7th July, 1917, with an editorial therein aded, as translated, "The Failure of Recruiting," and the transla- n thereof.

Mr. Gray: I desire to object to each of these exhibits in the same anner as I have to the preceding ones.

The Court: The same ruling will be entered and a like exception noted.

(Exception noted for the defendants individually and jointly, by direction of the court.)

Mr. Roberts: I also offer in evidence, if your Honor pleases, in support of Count 9 Government Exhibits Nos. 63 and 64, being an issue of the Tagebiatt of 2nd July, 1917, containing an article headed "Die Meisterschüken," with a translation thereof.

Mr. Gray: Now, if your Honor pleases, I make the same objection but the additional objection that the publication of that article is not set forth in the indictment. So that there may be no misunderstanding as to what I mean, there is no charge that that is the publication of an article which is the conveying of false news, nor is there any charge that that is the publication of an article that would interfere with or obstruct recruiting. The way in which it appears in the indictment, and the only way, is that after averring in Count 9 the existence of a conspiracy to do three different things it is charged that as an overt act in the doing of such a conspiracy they did publish on a certain day an article entitled "Die Meisterschuken," but not setting that article forth.

The Court: The same ruling will be entered and an exception noted.

(Exception noted for the defendants individually and jointly, by direction of the court.)

362 Mr. Roberts: I offer in evidence, if your Honor pleases, in support of all of the counts and of the conspiracy count, in order to prove purpose, guilty knowledge, system and intent, certain articles as follows: Government's Exhibits Nos. 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86 and 87, the first named exhibit number in each case being the German article in the Tageblatt and the second the translation thereof.

Mr. Gray: If your Honor pleases, I desire to object to the admission of these articles, because we are nowhere charged in the bill of indictment with their publication.

The Court: I do not understand they are offered on that ground.

Mr. Roberts: Not at all.

The Court: They are offered as bearing—well, on the Mosaic theory. These all enter into what constitute a thing which when put together the jury will be able to recognize, if they might not so recognize it unless they saw it put together. That is the general proposition.

Mr. Roberts: Yes, sir.

Mr. Gray: But your Honor will understand that the theory of my objection is that the Government, in seeking to prove the intent with which certain other articles which are made the subject of the indictment were published, has selected from a publication of a period of nearly three months' time certain other individual

363 articles and offered them, while the only possible way—and I do not quite understand that your Honor rules——

The Court: Are any of these before June?

Mr. Gray: Oh, no.

Mr. Roberts: There are none of them before June 15th.

COPY BOUND

Mr. Gray: The date is between June 15th and September 10th. Do not misunderstand that. But instead of the Government offering now the entire issue of the newspaper for the purpose of letting the jury see, if they please, article after article, which may bear upon the question of intent, the Government selects certain articles and their translations and offers the jury the benefit of what? I don't know how many, but maybe a dozen articles published during that time. Now, that does not give the jury a fair opportunity to determine, if the question become material, what the intent was with which the other articles that are made the subject of the indictment were published. Now, I think your Honor gets my thought. It does not show a man's custom or habit if, for instance, the thing that he did to-day is the question, and it is necessary to show that it was his habit to do that thing for a period of three months—it does not show it to be his daily habit if it is shown that he did it on one dozen other occasions within that three months.

The Court: We will assume unless there is evidence to the contrary that that is the only occasion on which they did do it,
364 because it is the only ones with which we have any evidence.

Mr. Gray: But they must go further. We have the right to let the jury have the benefit of anything that is in these newspapers that show the possible intent.

Mr. Roberts: I cannot stop you from having that benefit. I am offering the entire paper in evidence.

Mr. Gray: They are not offering the newspaper.

Mr. Roberts: Yes, I am.

Mr. Gray: In fact, they are not offering the newspapers. They are offering the newspaper together with the translation of one article.

Mr. Roberts: That is right.

Mr. Gray: So in effect they are not offering the newspapers even. But I say, though I do not concede that that is evidence against us, but if your Honor rules that the Government has the right to introduce other newspapers for the purpose of establishing the fact that there was an improper intent in the publication of the articles charged in the indictment, they must put them all in during that period of time and let the jury have the benefit of them all.

The Court: The objection is overruled and an exception noted for the defendants.

(Exception noted for the defendants individually and jointly, by direction of the court.)

365 Mr. Gray: I say to your Honor very frankly that if they were all put in evidence I would ask Mr. Peck as to the correctness of the translation of certain other articles, but of course we haven't got the benefit of that.

Mr. Roberts: How do you mean?

Mr. Gray: I have some translations here that I would ask your own witness whether they were correct.

CLOSE IN CENTER

Mr. Roberts: I will keep him here for you to do that, if you wa
him, or I will put him on the stand.

Mr. Gray: The papers are not in evidence and I cannot do it.

Mr. Roberts: Mr. Gray, they are in evidence.

Mr. Gray: Pardon me. I mean the entire issue of the newsp
pers during the period of time you charge this publication to
made. Have you offered them?

Mr. Roberts: No; I have not.

Mr. Gray: You have offered a selected few.

The Court: Any translations made by this witness, the defen
ants are entitled to the benefit of them.

Mr. Gray: He is not depriving me of that.

Mr. Roberts: We are not depriving him of that, and I say to hi
that if he wants the translation of any of the articles the Gover
ment will afford him the benefit of Mr. Peck's assistance. But
don't need us. He has got plenty of expert translators.

Mr. Gray: I haven't the papers.

366 Mr. Roberts: You haven't the papers?

Mr. Gray: No.

Mr. Roberts: Oh, Mr. Gray.

Mr. Gray: I beg your pardon, Mr. Roberts. The Governme
took every stitch of paper that was there. Absolutely.

Mr. Roberts: Do you mean to say that the defence has not
access to a file of the Philadelphia Tageblatt?

Mr. Gray: I mean to say that every time that we wanted an is
of the newspaper we have had to come to the District Attorne
office here.

Mr. Roberts: Have you been refused permission to look at the

Mr. Gray: Oh, no.

Mr. Roberts: Certainly not.

Mr. Gray: The point I am making is that they haven't all be
produced.

Mr. Roberts: I offer in evidence Government's Exhibit No.
if your Honor pleases, which has been identified as bearing
signature of Paul Vogel, the treasurer.

Mr. Gray: That is only objected to, if your Honor pleases,
cause I think it is totally immaterial and irrelevant. I do
think it has any bearing on this case.

The Court: Is it an offer of the paper?

Mr. Roberts: An offer of the paper.

Mr. Gray: To which I have objected.

367 The Court: It may go in for what it is worth. The
jection is overruled and an exception allowed to the defe
ants.

(Exception noted for the defendants individually and jointly,
direction of the court.)

368 Mr. Roberts: Now, if your Honor please, I offer in e
dence Government's Exhibit No. 88, which is a bundle
sheets said to be in the handwriting of Louis Werner, one of the
fendants.

COPY BOUND

Mr. Gray: I object to them because I don't see that they have anything to do with this case. There is no connection shown and it is absolutely irrelevant.

Mr. Roberts: I am offering them because I have identified a lot of documents by witnesses as being in the handwriting of one of the defendants, Dr. Darkow, and now Mr. Gray says that I don't identify certain things here, which any one can see by looking at it that it is not in Dr. Darkow's handwriting. I have absolutely carried the issue to Darkow and Werner as to all these papers.

Mr. Gray: Because other persons did not prepare these articles is no proof that these defendants did.

The Court: No, but this can be done, Mr. Gray, if this thing was done by some one of ten men, and it is shown that nine of them did not do it, then there is evidence that the tenth did.

Mr. Gray: That evidence is not in this case. In other words, I have a right to argue that the government has not reached that point in its evidence, because a number of witnesses were unable to say whether they did or did not have anything to do with the publication of certain articles, and Szepansecky could only say when asked in regard to some of them, "I don't know."

369 The Court: Well, that is an argument to be addressed to the jury.

Mr. Gray: I am addressing it to your Honor as to the admission of these papers.

Objection overruled. Exception noted for the defendants individually and jointly by direction of the court.

Mr. Roberts: Now, if your Honor please, I offer in evidence a book which has not as yet been marked as an exhibit, but which I will ask to have marked as Government's Exhibit No. 91, it being the minute book of the company, and offered merely for the purpose of showing certain officers named throughout the minutes as officers of the corporation over the secretary's signature.

Book offered in evidence marked "Government's Exhibit No. 91, 9-24-18, W. E. M."

Mr. Gray: The offer is objected to as having absolutely no relevancy to the question now being tried, which is the publication of certain articles in a newspaper.

The Court: I don't see the relevancy.

Mr. Roberts: I won't press it. The offer is withdrawn.

I now offer in evidence Government's Exhibit which I ask to have marked No. 93, being the charter of the corporation.

Paper offered in evidence is marked "Government's Exhibit No. 93, 9-24-18, W. E. M."

370 Mr. Gray: Although no identification has been offered of this paper, I do not object. That includes all that is in that paper, including the constitution.

Mr. Roberts: I offer it as a whole.

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LEONARD A. PECK, recalled.

By Mr. Roberts:

Q. Have you translated pages 130 and 131 of a book which was identified this morning as Government's Exhibit No. 89?

A. Yes. That translation was not originally my own, but I made certain changes that I found necessary and I accept it now as my translation.

Q. And it is now correct?

A. Yes, sir.

Book identified by the witness is marked "Government's Exhibit No. 92."

Mr. Roberts: I now offer in evidence this book together with a translation of matter appearing upon pages 130 and 131, being Government's Exhibit No. 92.

Mr. Gray: It is only objected to, if your Honor please, because I don't see that it has any bearing on the case, and I want, of course, to narrow the issue so that we won't have any complications to disturb us.

Mr. Roberts: It was testified that it was in the handwriting of Mr. Lemke, one of the defendants.

Mr. Gray: And being in the handwriting of Mr. Lemke, I
371 believe the evidence was that it was some memoranda that he kept in his desk.

Mr. Roberts: No. The evidence was that the book was kept in the office of the concern.

Mr. Gray: Certainly. His desk was in the office, and it shows plainly what it is, various memoranda put in from time to time. Now, I cannot see that from the article itself or the translation that it has any bearing on the matter before us. It is evidently a copy of some report that he filed.

The Court: This offer is made in connection with defendant Lemke?

Mr. Roberts: Yes, sir.

Objection overruled. Exception noted for the defendants, individually and jointly, by direction of the court.

Government rests.

Court adjourned until 10 o'clock A M., September 25, 1918.

COPY BOUND

Third Day.

UNITED STATES

vs.

SCHAEFER et al.

Philadelphia, Pa.,

Wednesday, September 25th, 1918—at 10 a. m.

Present: Parties as before noted.

Mr. Gray opened to the jury on behalf of the defendants.

Defendants' Evidence.

Mr. Gray: At my request, if your Honor pleases, counsel for the vernment has produced the copies of the Philadelphia Tageblatt d the Philadelphia Sonnstageblatt which were taken by the Gov- nment when the search warrant, as has been testified to, in this se was served from April 3, 1917, down to and including Septem- r 10, 1917. I desire to offer and do offer in evidence those copies.

Mr. Roberts: If the court pleases, that ought to be slightly cor- cted. Mr. Gray has asked for three issues just preceding April h.

Mr. Gray: I said from April 3rd.

Mr. Roberts: We have not got from April 3rd here, but are en- deavoring to produce them. We have only sorted out those 3 from April 6th to September 10th, including those that the Government has offered, which are not in this bundle now oduced. There are here all the issues, a complete file, of the ues from April 6th to September 10th. As soon as we are able to d the others, if we can find them, we will produce them.

Mr. Gray: Let my offer stand as it is, and, of course, if the other pers are not forthcoming, they simply lack those numbers. That all.

Mr. Roberts: There is no objection to the offer, sir.

LOUIS WERNER, one of the defendants, having been duly sworn, as examined and testified as follows:

By Mr. Gray:

Q. Though I am asking you the questions, you keep your voice at way. I can hear you, and you can hear me. Your full name what?

A. Louis Werner.

Q. How old are you?

A. 68 years.

Q. 68 years?

LOSE IN CENTER

A. Yes.
Q. Where were you born?
A. I was born in the south of Germany.
Q. Where?
A. In the south of Germany, in the City of Biebrich.
374 Q. How long did you reside there?
A. Up to my seventeenth or eighteenth year.
Q. And from there where did you go?
A. I traveled in Germany for a while seeing the country, an settled in Stuttgart, working there.
Q. Working at what?
A. In a clerical position.
Q. A clerical position?
A. Yes.
Q. For how long did you remain in Stuttgart?
A. For about two years.
Q. And from there where did you go?
A. To Austria.
Q. To what part of Austria?
A. Vienna.
Q. Where?
A. Vienna.
Q. For how long did you remain in Vienna?
A. I remained in Vienna and in another town near Vienna calle Wiener-Neustadt for about five years.
Q. And in what business were you engaged there?
A. Jour*an*list business and newspaper business.
Q. Journalist business and newspaper business?
A. Yes.
Q. And from there where did you go?
A. From there I went to Leipzig, Saxony.
375 Q. That is in Germany?
A. In Germany.
Q. For how long did you remain in Leipzig?
A. Two years.
Q. Engaged in what business there?
A. Newspaper writing.
Q. And from there where did you go?
A. To the United States of America.
Q. In what year did you come to the United States?
A. In October, 1878.
Q. Did you come alone?
A. Yes, sir.
Q. And when you came to the United States to what city did yo come?
A. I came to the City of New York.
Q. Did you remain there any length of time?
A. A short time.
Q. Were you engaged in any work there?
A. Yes.
Q. What work?

COPY BOUND

A. I worked in a furniture factory in Brooklyn.
Q. You worked in a furniture factory in Brooklyn?
A. Yes.
Q. How long did you remain there?
A. About three months.
Q. Then, did you come to Philadelphia?
A. Yes. I was called to speak at a public meeting, and they induced me to remain here, the people induced me to main here, and I settled down here, and have lived ever since in is city.
Q. When you came here what employment did you take?
A. I was first employed in a furniture business with a friend of ine, and then I took employment with the Tageblatt a short time terwards.
Q. Then you took employment with the Tageblatt a short time terwards?
A. Yes, sir.
Q. In what capacity did you take employment with the Tageblatt?
A. I was employed at the business office at first.
Q. And can you tell these gentlemen in what year and in what onth you went with the Tageblatt?
A. About 1880. I forgot something. In the first two weeks I as here, there was a meeting of the stockholders of the Tageblatt, nd I was elected. Some member gave me one share, so as to make e a member of the Society, and I was at once elected to the Board f Directors.
Q. Then you went in the business office?
A. Yes.
Q. And you say that was about 1880, you think?
A. About this time.
Q. About 1880?
A. Yes.
Q. Won't you tell us now of your various connections with the Tageblatt since that time, I mean to say what positions ou have held and how long you have held them?
A. Yes. First I was in the business office for two years. Then I had acquired some knowledge of the English, or enough knowledge of the English language to be useful in the editorial department, and I was transferred there, and worked, not as Chief editor, ut as a helper for several years, and then was promoted to be Editor, nd I have been its Editor all this time, and I am still Editor, or I as Editor, until last spring. However, about three years ago, I as what I may say half time. May I explain that?
Q. Yes?
A. I had worked almost nearly forty years, day and night. My ealth was run down, and I could not go on any longer. That was n the year 1916. I went to the Board and offered to resign. In act, pleaded to have them let me go. They would not hear of it. I had become a fixture in that place, and then a compromise was nade, that I should work as I pleased, as I could, and they engaged nother man to take off the large part of my own work. I agreed

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to that. I was relieved from routine work, and I did the wo
what I thought was necessary, and I was permitted to take le
whenever I thought it was necessary. I was suffering from a n
ous breakdown and acute nervous indigestion, and my state
378 health was generally bad. My physician is in court, an
guess will testify to that matter.

Q. You go right ahead.

A. Yes. Now, the war came, unhappily, when I was incap
tated to do much work. The Tageblatt before was largely a Soci
paper. I should say the German press in this country is in
main a supplement to the English papers. That is to say, most
the Germans to-day understand enough English to read Engl
papers, at least in a fashion, and when their children are growi
they demand an English paper in the family. So, as a rule,
Germans are subscribers for English papers, yet the German pap
have many features which the English do not have, and it is
this that they are read by the Germans. Immigration in a fore
country necessarily runs to societies. The whole life of immigrat
is centered in societies of all sorts and kinds, Building Associatio
Singing Societies, Gymnastic Soci-ties, Benefit Societies, and so
and Churches, and they want,—the Germans want, in the first pla
their paper to report the doings of these organizations, and this ta
most of the space in the German paper. Furthermore, they want
know what the Germans in other cities of this country are doing, a
they want to have Old Country news, local news from the old co
tries where their people are living, and all this takes a broad ro
in the paper, and, of course, the women want a German story, a
there are other matters that people can find in the Germ
379 papers, and that is the reason why the German papers ex
for in the matter of news the Germans do not look to t
German papers for full news. They will look to the English.
explain this, because it will be said, or it has been said, "You ha
not news of your own."

Q. You mean that is the reason your paper had no wire servi
as they call it?

A. Yes, sir. It was not necessary to have it, for it is of no i
portance to the German paper.

Q. We will come back to those matters in a moment, Mr. Wern
just as soon as we get a little bit more information about yourse

A. Yes.

Q. You have lived in Philadelphia during all this time?

A. I did.

Q. Are you married?

A. I am married.

Q. When were you married?

A. I lost my first wife. I am married twice.

Q. You have been married twice?

A. Yes.

Q. You have been married the second time how long?

A. Twenty-four years, about.

Q. You live, of course, with your wife now?

COPY BOUND

A. Yes.

Q. She is living?

A. Yes.

Q. Have you any children?

A. Yes.

Q. How many?

A. Three daughters.

Q. Three daughters.

A. Yes.

Q. What are their ages?

A. They are from about 18 to 23. They all went through the William Penn High School and are employed at offices as stenographers at present.

Q. All of them?

A. All of them.

Q. All single?

A. All single.

Q. All born in Philadelphia?

A. Yes, sir. My wife was born in Pennsylvania.

Q. Your wife was born in Pennsylvania?

A. Yes, sir.

Q. Then, I want you to explain to the jury another matter that possibly in my opening I did not make clear to them, and that is the financial situation and the ownership of the Tageblatt. You spoke of it being a company when you first came here, but the Government has offered a charter to show that it was organized and chartered by the State of Pennsylvania I think in nineteen——

Mr. Roberts: 1878.

Mr. Gray: Is this the original charter?

Mr. Roberts: Yes. 1878. That is a certified copy.

Mr. Gray: That is right. It is the matter of the reorganization that I had in mind.

By Mr. Gray:

Q. It was incorporated back in 1878, I believe?

A. Yes.

Q. You tell us, not in detail, but generally, how the stock of that corporation came to be controlled by the people who own it now, and what the corporation itself has to do with the publication of the paper.

A. Most of the new immigration, that is, the immigration of the seventies and the eighties of the last century, consisted of adherents of the Social Democratic Party in Germany, which was the most radical party in that country. They did not find a German paper in this country representing their political views, so they wanted to start a paper of their own. That was the Tageblatt. It was started before I came here. It first appeared in 1877, the year before I was here. These men and women, that started the paper, belonged to the working class, wage workers and small tradesmen, and they

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started a corporation, and had it incorporated in the State of Pen
sylvania. The value of a share was $2.50. The shares were sold
people sympathizing with the cause. It was agreed that t
382 shares could not be transferred from one party to anoth
without the consent of the Board of Directors. This was
prevent the control of the paper by a single person, one man or o
woman, no matter how many shares they had, and he could not ha
more than fifty, for that same reason, so as not to give control to
single person. By and by a large number of the original stoc
holders died. Their names are still on the books of the Societ
Therefore, it was said by one of the witnesses that we have near
one thousand. I cannot say how many of those are today aliv
but certainly many have died. Others have become members w
are not active in the Society. Consequently, it was necessary to g
new blood into that organization, and the best way was to go
the working people's organizations and interest them for the pap
The Tageblatt was selected as the paper of the United States Germa
race. This is a federation of societies about twenty-five in numbe
and most of them, and also the Federation, acquired shares and b
came stockholders in the concern. Then, there are about twen
singing societies also organized in the Federation, and they d
the same. Consequently the representatives of those organizatio
soon outweighed the old stockholders, and so they became the co
trolling element of this society. That is what you wanted me to sa

Q. Yes. What, if anything, has the Society, while we are on th
point, to do with the actual publication of the paper and the contr
of the contents of its columns?

A. The Society elects 15 Directors. It is called the Boa
383 of Directors. They elect five men, a Board of Supervisor
The Board of Directors attends to the business affairs of t
concern in that work, and they appoint the manager, and the man
ger reports to them at their weekly or monthly meetings, about t
state of the business affairs. Then there is a Board of Supervisio
That Board of Supervision attends to the editorial matters, if nec
sary. As a matter of fact, this Board has not done anything in
long time in regard to those things.

Q. For how long?

A. Oh, for years.

Q. For years?

A. Yes. For the simple reason that I have been very nearly the
forty years, and these people trust to me implicitly, and they did n
find it necessary to bother about these things.

Q. In other words, it was practically left in your charge?

A. So it was.

Q. That is, the actual work being done by you and your associate

A. So it is.

Q. Now, in that connection, of course, you know Mr. Schaefer?

A. Well, I know him. I have not seen him for some time.
would hardly recognize him if I met him on the street.

Q. How often do you suppose you saw him between April an
October of last year, 1917?

COPY BOUND

A. Likely not one time.
Q. Likely not one time?
A. Yes.
Q. Did he ever come to the office and superintend or control any matters around there?
A. Not to the second floor where we were. Maybe he has been at the office.
Q. And Mr. Vogel?
A. The same.
Q. Do you know him?
A. The same. I know him from seeing him, yes, now and then speaking a few words.
Q. During the time that I have mentioned, from April to October of 1917, had he anything to do with the management or control of the paper at all?
A. Not as far as I know. I have never seen him.
Q. Or had he anything to do with the articles that might have appeared in the paper in any way?
A. Absolutely nothing.
Q. Absolutely nothing?
A. No.
Q. Mr. Werner, when you came to work for the Tageblatt at first, what was your salary?
A. $10.
Q. And did that increase from time to time?
A. Well, up to $21.
Q. Up to $21.?
A. Yes.
Q. How much salary were you getting on September 10th when the Government came and interfered with your paper?
A. $12.
Q. $12. a week?
A. Let me explain, please?
Q. Yes, I will.
A. I went to the Board. The financial situation of the paper was not very good. I have a competence. At least, I can live for a while without it being necessary to work. So I went to the Board. I said, "I want to get out." They would not let me go. I induced them to let me have half time. Then I said I only would take half of my wages.
Q. Then is when you got $12?
A. I requested to cut it in half. I asked that. They would have paid me in full, if I wanted it, but I would not take it.
Q. What was the highest salary you did get in your active work when you were working there during these years?
A. $21.
Q. $21?
A. Yes, sir.
Q. You had no interest in the corporation other than one share of stock, I think you said you had, or did you get more stock?
A. I bought a few more. I have five in all.

LOSE IN CENTER

Q. Five shares in all?

A. $12.50.

386 Q. $12.50 worth of stock?

A. Yes.

Q. You got $21. as the highest for the work that you did there

A. Yes, sir.

Q. Mr. Werner, what did the rest of your family, that is, your family in Germany, where you were born, your mother's and your father's consist of?

A. I don't know how many of my brothers and sisters are alive.

Q. How many were there?

A. There were ten children.

Q. How many of your brothers came to this country?

A. Three.

Q. Three?

A. Yes.

Q. Did they come before you, or after you?

A. Before me.

Q. How much before you? Do you know?

A. A long time. One went away from Philadelphia in 1849, to California.

Q. One went from Philadelphia in 1849 to California?

A. Yes, and never came out of the State.

Q. What became of the others?

A. Both are dead now. One of them settled in Virginia. When the Civil War broke out he came North, he passed through the lines at the danger of his life, and joined the Union Army.

Q. How many brothers did you have in the Civil War?

387 A. Two. The other was with the National Malitia of California.

Q. Were any other members of your family engaged in the Civil War?

A. Yes, several. Two persons were mortally wounded in the Battle of Gettysburg, and were members of the 71st Pennsylvania volunteers. They are buried in the National Cemetery in Gettysburg.

Q. You followed your other brothers here?

A. Yes.

Q. They came, of course, earlier than you, if they were engaged in the Civil War?

A. Yes.

Q. Now, you have sat here and heard what has been said. You have told us you only devoted part of your time to the paper during the summer of 1917, but you have heard the nature of these charges that are made against you and your co-defendants, and I might say against the publication of which you had charge, the Philadelphia Tageblatt and the Sonnstageblatt?

A. Yes, sir.

Q. Generally speaking, what can you say to the jury with reference to the charges that you published news, that you endeavored to obstruct the recruiting service of the United States, and that that

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done as a result of a conspiracy to hurt the Government? ave you to say to that?
deny that I did anything that is charged against me. In t place, there could be no conspiracy.

Roberts: Ask him not to argue legal points.

By Mr. Gray:

want you to pardon me a minute. I want you to avoid g the matter, Mr. Werner.
see.
n other words, you state the facts to the jury?
Yes.
Of course, I realize how difficult it is for a man in your situa- avoid that, but try to state the facts to the jury.
Yes.
Not argument.
Yes. I did my work. My work consisted of writing edito- writing running despatches, which is a running comment on ay affairs, and looking over things generally.

By Mr. Roberts:

What is that?

By Mr. Gray:

Looking over things generally?
Looking over things generally. Usually, when I was in I came there about five or six in the afternoon and remained ree or four hours, sometimes talking a little bit to my col- s, and sometimes not, sitting down and writing what I thought cessary to write, and went off. During that time I was away times, once in July, at the end of June and the beginning y, and once later on. I cannot exactly name the days. st occasion I know certainly ended with the 4th of July.

By Mr. Roberts:

What is that?
The first occasion ended with the 4th of July.

By Mr. Gray:

The first occasion ended with the 4th of July?
Yes.
By that do you mean you came when you say the first occasion with the 4th of July?
On that date.
On the 4th?
On the 4th of July, but I did not go to the office on that day.
You did not go to the office on that day?

SE IN CENTER

A. No, sir. During the preceding time I was living at the Hotel Gage at Atlantic City. The work in the newspaper office is divided up according to the stuff, the material, in several departments. News, local, editorial, reporting of all sorts, and so on. There were four or five men working besides me. One was a news editor, Mr. Darkow. He is by—I might say that?

Q. What?

A. He is by profession a musician. He is a musician by profession, a teacher of music, but to eek out a living had to go to work in the German papers, to do translating. Before he was engaged at the Philadelphia Demokrat Gazette. Before the war was on he had not much to do with politics at all. He reported musical affairs and such things and *so*cieties and made trans-
390 *la*lations of all such things. It was only when this war unexpectedly came on that he was thrown into another field of activity. He had nothing to do. He was unexperienced in the matter. For that matter we all were, because, as I told you before, the Tageblatt had been mainly a society paper up to that time. They worked in very little stuff of general affairs, and so on, and of course this changed us all together. So he as the news man had to work up these things. He had a day off a week, and then some others worked for him, mostly Mr. Szepanscky, who was City Editor. I helped him sometimes. Then on Saturday evening Mr. Szepanscky edited the news and I helped him. There were others employed. Mr. Herbert, City news, and Mr. Seiffert, and other men. Mr. Seydel, Mr. Bruchig, and so on, working as translators on the paper. The run of things was this. Every editor took what he thought was suitable for the paper. He was the sole judge of what should go into the paper. Nearly everything came in the English language. We had reports, we had court reports, for instance, in the English language, and others, and we had for a long time the United Press, but we gave that up, because it gave us no satisfaction. We did not get the news we wanted. All this stuff has to be translated, and has not only to be translated, but to be condensed, because the Tageblatt is only a- eight page paper. Half of it is filled with advertisements, and we have to get in all the stuff in about twenty-eight columns a day, whereas the English paper,
391 for substantially the same stuff, had four or five times as much space. So everything has to be shortened and condensed. The writer was the sole judge of how much he would give of an item. It has been said during this trial that these things were shortened, and some things were left off. Not only these things,—everything—was shortened, whether it was a fire or a murder or a proceeding of Select Council or anything. We never had the space for it that the English paper had. We always condensed things, boiled them down, as much as we could. When it was written the editor put the copy on a shelf in the composing room, the compositors' room, and there it was taken by the compositors as they needed copy. Reporters were sent out by the City editor, and worked the same way, brought in their reports, wrote them up, and gave them out there. I did not see what was to be printed in the paper until

ad the paper the next day. It would have been simply impos-
e for me to go through the copy of every other writer. That
ld have been a physical impossibility. I had to trust to those
n.
Now, Mr. Darkow had been employed at newspapers for a long
e and he knew the run of things. Mr. Herbert also had an
erience, so had Mr. Szepansky, who had been empolyed by the
ette, and I could trust to them.
Now, what else?
And as to the Board of Directors, I never saw them in their
capacity as Directors, but Vogel and Schaefer are secretaries
of Unions, and as such they had reports of the doings of their
ions, and sent them up to the editorial room.
With Mr. Lemke, I sometimes had a talk about matters, about
trices, and such things, which is from syndicates, and plate mat-
, and such things, and money, or for money that was to be ex-
ded for travel, or reporting, and things, where I needed money,
I had no money to dispose of.
Q. What had he to do with the paper, the publication of it?
A. Nothing, only the business end of the affair.
Q. Mr. Werner, I want to take up the articles that are charged in
Bill of Indictment and ask you to give us as much information
ou may be able to with reference to any of them.
show you Government's Exhibit No. 1, being the Sonnstageblatt
the 24th of June, 1917, and call your attention to an article on
3rd column of the 1st page headed "Die Krisis." Will you tell
if you can, whether you had anything to do with the appearance
hat article in the paper?
A. That is Sunday, the 24th?
Q. Sunday, the 24th day of June?
A. I cannot say.
Q. You cannot say?
A. No.
Q. That is a news item, is it not?
A. Yes, sir.
Q. In the ordinary course of your work you would not have anything to do with it?
A. On Saturdays, yes.
Q. On Saturdays?
A. Yes.
Q. For appearance in the Sunday paper?
A. Yes.
Q. But you cannot say whether you had anything to do with that or not?
A. No, sir.
Q. I call your attention to Government's Exhibit No. 5, being the iladelphia Tageblatt for Tuesday, July 10, 1917, and show you umn 3, page 3, article headed "Confirmed," and ask you whether not *who* had to do with the putting of that article in the paper?
A. I had nothing to do with that and I don't know who had to do h it.

Q. I show you Government's Exhibit No. 10, and call your attention to an article appearing on page 1, column 5, headed "Drunter Und Druber," "Ups and Downs," and ask you what, if anything, you know about the appearance of that article in the paper, which is Friday, July 20, 1917?

A. I don't know anything about it.

Q. You don't know anything about it?

A. No.

Q. You mean by that that you are unable to tell us whether
394 you or anyone else, in your editorial capacity directed the insertion of that article. Is that it?

A. Yes, sir.

Q. I show you Government's Exhibit No. 14, being the Philadelphia Tageblatt for Wednesday, July 25, 1917, and call your attention to an article on page 4, column 5, headed "Vas Vafhington hofft," and ask you what you know about the insertion of that article in the paper?

A. Nothing.

Q. Nothing?

A. Nothing.

Q. Meaning the same as you meant in your other answer?

A. Yes.

Q. In the same exhibit I call your attention to an article on page 5, column 4, headed "Serbien," and ask you what, if anything, you know about the insertion of that article in the paper?

A. It is the same.

Q. The same?

A. Yes, sir.

Q. I show you Government's Exhibit No. 20, being the Philadelphia Tageblatt for Tuesday, August 14, 1917, and call your attention to an article appearing upon page 5, column 3, headed "Ein Interim," and ask you what, if anything, you know about who was responsible for the insertion of that article?

A. I do not.

395 Q. Of course, there is no doubt that some one connected with the editorial rooms of the Philadelphia Tageblatt caused its insertion?

A. No.

Q. No doubt about that?

A. No.

Q. I show you Government's Exhibit No. 24, being the Philadelphia Tageblatt for Thursday, August 16th, 1917, and call your attention to an article on page 1, column 2, part of an article headed "Nichts Cicheres," and ask you what, if anything, you know about the insertion of that article in that newspaper?

A. Nothing.

Q. Nothing?

A. No.

Q. I show you Government's Exhibit No. 20, being the Philadelphia Tageblatt for Wednesday, August 22, 1917, and call your attention to an article on page 5, column 2, headed "Krieg der Reichen,"

War of the Rich." Can you tell me who was responsible for the ertion of that article in the paper?
A. I cannot.
Q. You cannot?
A. No, sir.

Mr. Roberts: A juryman suggests that in each case you use the English name of the article.

Mr. Gray: I will do that. I- will help me considerably. The only thing is the difficulty about identifying the article lf. That is all.

Mr. Roberts: Speak of the exhibit number, the page number and column, each time.

By Mr. Gray:

Q. I show you Government's Exhibit No. 33, being the Philadelia Tageblatt for Monday, September 3, 1917, and call your attenn to an article appearing on page 4, column 4, headed—it is a subicle, as many of these are—"Further Economies." Can you tell who was responsible for the insertion of that article?
A. I cannot.
Q. You cannot?
A. No, sir.
Q. I show you Government's Exhibit No. 38, being the Philadelia Tageblatt for Tuesday, September 4, 1917, and call your attenn to an article appearing on page 1, column 6, being just a paraaph taken from the news, ans set forth in the indictment, headed arrail's Troops Beaten." Do you know who was responsible for insertion of that?
A. I do not know.
Q. You do not know?
A. No, sir.
Q. I show you Government's Exhibit No. 43, being the Philadelia Tageblatt for Friday, September 7, 1917, and call your attention to an article appearing therein on page 1, column 1, headed "For Political Reforms," and ask you if you know who was responsible for the insertion of that article?
A. I don't know.
Q. You don't know?
A. No, sir.
Q. Then I call your attention in the same exhibit to an article pearing on page 4, column 3, headed "What Does This Mean," or Vhat Means This," "Was foll bas," and ask you if you know who s responsible for the insertion of that article?
A. I do not know.
Q. You do not know?
A. No.
Q. These articles that I have shown you,—before I put that quesn, Mr. Werner, I will show you Government's Exhibit No. 52, be a Philadelphia Tageblatt for Saturday, September 8, 1917, and

call your attention to an article on page 1, column 5, headed "R bereit." What is the translation of that?

A. "Ready for the Battle," or something of that sort.

The Court: It is headed "Ready For The Fray."

Mr. Gray: "Ready For The Fray." That is the heading article,—the translation.

By Mr. Gray:

Q. I ask you whether you know who was responsible for the tion of that article?

A. I don't know.

Q. You don't know?

398 A. No, sir.

Q. Now, Mr. Werner, all of the articles that I have you so far purport to be news articles, and are the subject of th Count of the Indictment. I now take up the matters that under the second Count of the Bill of Indictment, and sho Government's Exhibit No. 57, being the Philadelphia Tageblatt Wednesday, July 4, 1917, and call your attention to an artic pearing on page 4, column 1, which appears to be an editorial h "For The Fourth of July," and ask you if you know who wrot editorial?

A. I wrote it.

Q. You wrote that?

A. Yes, sir.

Q. When did you write it?

A. A few days before, probably before I went on my vacati

Q. And left it there for the purpose of publication?

A. Yes.

Q. On the morning of the 4th of July?

A. Yes, sir.

Q. Now, I come to Count No. 3 of the Bill of Indictment an your attention to Government's Exhibit No. 59, being the Phi phia Tageblatt for Monday, August 6, 1917, and call your att to an article which purports to be a news article appearing on p column 4, headed "Yankee Bluff," and ask you if you know wh responsible for the insertion of that article?

399 A. I don't know.

Q. You don't know?

A. No.

Q. I call your attention to Government's Exhibit No. 61, has to do with the 4th Count of the Bill of Indictment, the E being the Philadelphia Tageblatt for Saturday, July 7, 1917, call your attention to an article appearing on page 4, colu headed "The Failure of Recruiting." It appears to be an edi I ask you what, if anything, you know about who wrote tha torial?

A. I understand, but I am not certain, that it is a clipping some other paper. It was clipped from some other paper.

Q. You did not write it?

A. I did not write it.
Q. You did not write it?
A. No.
Q. But your recollection is that it was a clipping from another paper?
A. Yes.
Q. An editorial, you mean, that was clipped?
A. Yes.
Q. You clipped some of your editorials as well as some of your news items?
A. Yes.

The Court: I call your attention to the fact that you did not ask him whether he directed the insertion of this article.

Mr. Roberts: I did not want to interrupt, but I wanted to ask that.

Mr. Gray: I will be very glad to ask him that question.

By Mr. Gray:

Q. Do you know who was responsible for that? By that I mean who did the clipping and directed the insertion of it in this newspaper?
A. This I cannot say.
Q. You cannot say?
A. No, sir. May I explain?
Q. Yes.
A. When we got this Bill of Indictment of course we looked over the thing and found this article, so we wanted to know how it came there. Nobody knew about it. I knew I had not written it. Nobody was found among us who had written it, and as a rule, the second, third and fourth articles on the fourth page are clippings. That is the custom with German papers.
Q. The custom is to write the first editorial and clip the others?
A. Yes, sir. Can I explain?
Q. Go ahead.
A. German papers are all shortened. There is too much routine work, you see, they have not much money all together, and so there is sort of a fraternity among editors. One takes from the other what he likes, without giving credit. That is done all over the country. I write the first editorial, but other things to fill up, the second, third and fourth columns, are taken from others. They do that in St. Louis, Chicago, or somewhere else. Then that would be regarded as reports, but the English papers are given in one title and then in German, and then it is there as editorials, but they are not editorials at all.
Q. I show you Government's Exhibit No. 63, this matter coming under the 9th or Conspiracy Count, being the Philadelphia Tageblatt for Monday, July 2, 1917, and call your attention to an article appearing on page 1, column 4, "Die Meisterschuken," and ask you if you know who is responsible for the insertion of that article?
A. I was not there.

Q. You were not there?
A. I was not there at the office. I don't know anything.
Q. Had you anything to do with it?
A. No, sir.
Q. That covers, I think, all the articles in the indictment. Now the other articles that the Government has offered. I show you Government's Exhibit No. 71, being the Philadelphia Tageblatt for Friday, June 22, 1917, and call your attention to an article appearing on page 7, column 5, in the "Spazierganger." That is in the column you say in which appear the editorials headed "Promenader." That article is headed "Be thankful."
402 A. Yes.
Q. Do you know who wrote that, or who is responsible for its insertion in the paper?
A. I do not.
Q. Now I call your attention to Government's Exhibit No. 73 being the Philadelphia Sonnstageblatt for Sunday, the 15th day of July, 1917, and show you an article appearing on page 1, column 5 a news article, headed "Peace." Do you know who is responsible for the insertion of that article on that date?
A. I don't know.
Q. I show you Government's Exhibit No. 75, being the Philadelphia Tageblatt for Wednesday, July 18, 1917, and call your attention to an article appearing on page 1, column 3, headed "That Sounds Good." Is that the proper translation of it?
A. Yes, sir.

Mr. Roberts: "This sounds good," we have the translation of it

By Mr. Gray:

Q. Tell me, if you know, who is responsible for the insertion of that article in the paper?
A. I don't know.
Q. You don't know?
A. No, sir.
Q. In the same exhibit, No. 75, I show you an article appearing on page 7, column 3, headed "A Review of 1916." Do you know who is responsible for the insertion of that article in your
403 paper?
A. That is plate matter.
Q. That is plate matter?
A. Yes, sir. It was furnished us by the American Press Association.
Q. It was furnished to you by the American Press Association?
A. Yes, sir.

Mr. Roberts: Will you ask him who was responsible for putting in that plate matter?
Mr. Gray: I am coming to that.
Mr. Roberts: He has not answered that yet.

By Mr. Gray:

Q. Who has to do with the insertion of the plate matter in your newspaper?
A. The compositor, the foreman.
Q. The foreman of the composing room?
A. Yes.
Q. Does it reach you?
A. No, sir. It comes in boxes in the composing room and he takes it out and puts it in.
Q. And it goes into other newspapers all over the country at the same time?

Mr. Roberts: Does it? Let him answer that, if he knows, because I am going to try to contradict that. Does it? Do you know whether that article went into every newspaper all over the country?
The Witness: I am pretty sure.

404 By Mr. Roberts:

Q. Do you know?
A. Not absolutely, with absolute certainty, but I know they have subscribers all over the United States.

Mr. Roberts: That is different.

By Mr. Gray:

Q. They would not make just one plate for you?
A. No, sir.

Mr. Roberts: It is not sure that they would all use that kind of a plate.
Mr. Gray: I will let you two gentlemen argue that out later.

By Mr. Gray:

Q. I show you Government's Exhibit No. 78, being the Philadelphia Sonnstageblatt for Sunday, July 22, 1917, and show you an article appearing on page 7, column 3, under the column of "Promenader."
A. Yes.
Q. A short editorial, I should call it. I ask you if you know who wrote that?
A. I decline to answer this question on the ground that it may incriminate me. I have been informed that the man which is spoken of in this article threatened to sue me for libel, for criminal libel.
Q. The individual who is there named?
A. Yes, sir.
Q. And you decline to answer for that reason?
405 A. Yes, sir.

A Juror: What was that?

Mr. Gray: He says he declines to answer who wrote that ar because he understands——

Mr. Roberts: He understands it may incriminate him.

Mr. Gray: He understands the man who is mentioned in going to sue him for criminal libel. That is the answer.

Mr. Roberts: He understand- the man who is mentioned in going to sue him for criminal libel. That is the answer.

Mr. Gray: The answer was "I decline to answer on the gr that it may incriminate me, because I understand or have beer formed that the man who is mentioned in the article has threat to sue me for libel." That is a very plain answer, that he does propose to answer a question here to furnish evidence to a man is going to sue him. You will have the article before you.

The Court: What is the date of that article?

Mr. Gray: That paper is dated July 22, 1917.

By Mr. Gray:

Q. I show you Government's Exhibit No. 80, being a copy of Tageblatt for Friday, August 3, 1917, and call your attention t article appearing on page 4, column 1, which is an editorial he "Gloom upon Gloom." Tell me, if you know, who wrote that?

A. I wrote it.

Q. You wrote that?

406 A. Yes, sir.

Q. I call your attention to Government's Exhibit No. which is the Philadelphia Tageblatt of Saturday, August 4, 1 and call your attention to an article appearing on page 4, colum which appears to be an editorial headed "At last Joyous Ne Will you tell me who wrote that, if you know?

A. I cannot tell you.

Q. You cannot tell?

A. No, sir.

The Court: Give me the date of that?

Mr. Gray: August 4, 1917. Saturday.

By Mr. Gray:

Q. Do you know who was responsible for its insertion in the pa

A. I cannot tell.

Q. You cannot tell?

A. No, sir.

Q. I show you Government's Exhibit No. 84, which appears t the Philadelphia Tageblatt for Wednesday, August 8th, 1917, call your attention to an article on page 1, column 3, headed " jects of the War," which appears to be a news article, and ask if you know who is responsible for the insertion of that article in paper?

A. I don't know.

Q. I call your attention to Government's Exhibit No. 86, which appears to be the Philadelphia Sonns-Tageblatt for Sunday
407 August 19th, 1917, and call your attention to page 7, column 3, to an article appearing under the column called the "Promenader," which has been referred to.

Mr. Roberts: It is in the "Spazierganger."
Mr. Gray: Yes.

By Mr. Gray:

Q. With the name of "Mr. Elihu Root," and ask you if you know who wrote that article?
A. I did.
Q. You did?
A. Yes, sir.

Mr. Gray: I think, Mr. Roberts, that covers all the articles, and if you want a summary of his testimony, there are three articles he admits he wrote, one he declines to answer, and the others of which he does not know anything about.
Mr. Roberts: I think that is his testimony.

408 Cross-examination.

By Mr. Roberts:

Q. You say that you did write the editorial marked "For the Fourth of July"?
A. Yes, sir.
Q. That editorial is translated in the indictment, is it not? You have a copy of the indictment?
A. Yes.
Q. Is the translation there correct?
A. I cannot say that offhand.
Q. You have read it over, have you not?
A. I may have read it.
Q. How long have you had that paper that you are looking at in your possession? Look at page 33.
A. Yes, I think it is a fair translation.

The Foreman of the Jury: Which article is that, please?
Mr. Roberts: This is the article on the Fourth of July, of which he admits the authorship, an editorial.

By Mr. Roberts:

Q. What did you mean there when you said "The Fourth of July Orators have a sour piece of work to-day"?
A. Until that date most of the Fourth of July orators thundered against England. Now this time they had to reverse themselves.
Q. And you thought that was pretty funny?
A. Yes.

Q. You thought that was something of a joke on
409 Fourth of July orators, did you?
A. Yes.
Q. Did you intend that sentence—you wrote it because you
tended it to be read by the public, of course?
A. Certainly.
Q. And did you intend that sentence to help the United Sta
in the war in which it was then engaged?
A. It had nothing to do with the war at all.
Q. Then I will turn to the end of the article, where you say "
it will not rest there. The call for peace will come from the mas
and will demand to be heard. And the sooner the better.
blood has been shed yet, no hate or bitterness has yet arisen agai
Germany, who has never done this country any harm, but has s
millions of her sons for its upbuilding. The sooner the Americ
people come to their senses and demand peace, the better and m
honorable it will be for the country." You published that to
read by your subscribers?
A. Certainly.
Q. And you intended that to influence them favorably to
United States?
A. I do not know how it influenced them. I had no intentio
It was my opinion.
Q. What was it your intention to do?
A. My intention——
Q. Was that it was to help the United States win the w
was it?
410 A. It was not a question of helping the United States.
writing an editorial it is not intended to help or hinder.
wrote that editorial on the Fourth, because I had to write one and
expressed my thought.
Q. And as you had to write something, you just wrote this?
A. Yes.
Q. And you say an editorial is not intended to help form pub
opinion?
A. I do not know what it is intended to do. I write the editori
because I like to do it. It is my business to do it.
Q. How long have you been in the newspaper business?
A. About 45 years.
Q. What do you understand the editorials in a newspaper are
tended to do, to form and lead public opinion or not?
A. They may be intended this way.
Q. But you did not intend your editorials to form anybody's pub
opinion?
A. Some, yes.
Q. But not this one?
A. No—well, how could an editorial on the Fourth of July i
fluence public opinion?
Q. When you say that the masses of the people will demand
be heard for the cry of peace and as soon as the cry is recognized
will be the better for the country——

A. Yes.
Q. Did you mean to express an opinion?
A. I expressed my opinion.
411 Q. Did you mean to persuade people that that was a proper view to take?
A. It was for them to do what they liked.
Q. You said in this editorial "But the people can make themselves heard in another way?"
A. Yes.
Q. "They have won the right to give free expression to their opinions?"
A. Yes.
Q. "They have already expressed their repugnance at giving aid to the hereditary enemy by the unwillingness of their young men to offer themselves as volunteers for the war." Where did you get that idea?
A. I got the idea from that conscription was really—that is, recruiting, did not get the required men, the number of men required and demanded by the United States Government, notwithstanding the President made a personal appeal, and so it was necessary to establish the draft.
Q. And you said to your readers on the Fourth of July—and you knew that was our great national holiday?
A. Yes.
Q. And you addressed your readers on that day with the statement that the young men of this country had shown their unwillingness to fight for the country against Germany?
A. Which was true.
Q. Which you say was true?
A. Yes.
412 Q. And you intended that to help the United States in recruiting young men?
A. I told you——
Q. You did not care whether it [illegible]ped or not; is that it?
A. Just wait. The United [illegible]es had given up recruiting and had at that time—it was going [illegible]r to the draft, to general——
Q. Conscription?
A. Conscription, because they did not get men enough by recruiting.
Q. Now then, you said in this editorial—and you say you are a loyal American?
A. Certainly I am.
Q. "The Fourth of July celebration, which has long been an empty formality, will this year become a miserable farce?"
A. Yes.
Q. What did you mean by that?
A. Because the same speakers, or about the same speakers, that always thundered against England, had now to change their tone, had to praise England as our ally and friend, and so on and so on and so on. They had to reverse themselves, as I said before.
Q. You knew that England was our ally in this war?

A. I did not know and I do not know it yet. There is no t
for alliance.

Q. You do not know it yet?

A. No, sir.

Q. And you did not know that anything that reflecte
413 England and that set the people of this country against
land was just by that much setting them against the war
you?

A. Not at all.

Q. You did not realize that at all; and so you said down
"The ruling classes of England have always despised and hated
United States, and today while they flatter them, they still ch
the same feeling toward them." You thought that would help y
men who read that to be anxious to go to war, did you?

A. That is my firm belief.

Q. "Under Wilson's regime the United States have sprung t
side of England as its savior in time of need. They provided it
the means to carry on the war and when that wasn't enough,
sprang into the war themselves. History will some time prono
its judgment upon this. For the present, however, we can at
make clear the mitigating circumstance that the people of the U
States did not want this war, that it was commenced without t
consent, and that the great majority of them do not approve
even today." That expressed your firm belief?

A. Yes.

Q. Expresses your firm belief now?

A. Yes.

Q. And that you put out in an editorial which was to form
mold the opinion of the readers of your paper; yes or no?

A. As you say. I do not know whether it could form i
414 Q. What did you mean by this, please: "If this is disp
it can be tested by simply letting the people vote upo
But that will be carefully avoided." What did you mean by t

A. That means that if there had been a vote on the questio
war, we would not be in the war now.

Q. What did you mean by "that will be carefully avoide
Who did you think was trying to cut off the free will of the pe
of the United States?

A. It was proposed by many people that there should be a v
a general vote.

Q. What did you mean by saying "But that will be carefu
avoided"? Who was trying to avoid letting the people speak? Wh
had you in your mind?

A. Congress, of course.

Q. Congress would not let the people vote on it?

A. No.

Q. Did you not know that the people, through their represen
tives *on* Congress, had voted on it?

A. No, they had not.

Q. Did you not know that Congress, when it voted, was voting
the voice of the people of this country to declare war?

A. No.
Q. That they were your representatives and mine; did you not know that?
A. I know that Congress declared war, but there is a question whether the Congress represented the majority of the people
415 in this vote.
Q. That was a question in your mind, then?
A. Yes.
Q. And you were a naturalized American citizen?
A. Yes, I am.
Q. And you thought that Congress had not expressed the will of this people?
A. That is what I thought.
Q. And you told your readers that if they had a chance, and all the others of our citizens had a chance, to vote against it, they would vote it down?
A. Exactly.
Q. And you had no intent in that editorial and no thought that that editorial would set anyone's mind against the war?
A. I do not know what intent I had last Fourth of July.
Q. You know what intent you had, and no one else can tell.

Mr. Gray: Let him answer fully when he answers.

By Mr. Roberts:

Q. Yes, go on. I say, you know what intent you had in writing that piece of paper. Now what was that intent?
A. How can I say to-day what intent I had last Fourth of July?
Q. You cannot say?
A. I cannot say.
Q. You certainly had no intent to encourage Germany's position in the war by that editorial?
A. Not at all.
Q. And you certainly had no intent to criticize the position
416 of the United States in the war by that editorial, had you?
A. In some matters I had.
Q. Then you were writing that editorial with the intent to impede the success of the United States in this war?
A. I do not know what I intended at that time.
Q. Did you write it as an assistance to the United States; was that in your mind?
A. I wrote it as——
Q. Did you think it would help?
A. I wrote it as the editor of the Tageblatt.
Q. You said in that editorial "Germany has never done this country any harm"?
A. Yes.
Q. You knew of the U-boat war at that time?
A. That of course means up to this war.
Q. I know, and what caused us to go into the war? Was it not,

in great part, the U-boat sinkings of neutral ships, ours among others?

A. Look here, the cruiser Alabama sent more than one hundred ships to the bottom during the Civil War. It was fitted out in England. The United States did not go to war for that.

Q. No, but President Lincoln threatened to go to war for it, did he not?

A. He threatened?

Q. Yes, and it was stopped?

A. I do not know he threatened.

Q. Did he not? If you do not know, then do not quote
417 history that you do not know about.

A. It is a matter of fact that the United States did not go to war.

Q. That is true.

A. They forced England to accept the Geneva Board of Arbitration and got $25,000,000 damages for these things. Now all the German submarines did not sink four American ships during all this war.

Q. How many did you think the German submarines had to sink, with American flags and American men on them, before you would say that Germany had done this country any harm? How many would you require to be sunk before you would think it was harmful? You say not over four.

A. Doing harm means whether it was intentional or not.

Q. Oh, and you were of opinion that the German sinking of neutral ships was unintentional, were you; that was your view?

A. I do not know how it was.

Q. Then why did you say Germany had never done any harm?

A. I take it that Germany had already enemies enough, without making the United States an enemy to them, and that they would not attack intentionally a United States ship, therefore I take it that they would not do it. In such an immense conflagration, of course such things happen. All neutrals suffer during wars, especially in such an immense war as this, but the number of American ships sunk was very small.

Q. Now I will take another article that you admit the authorship of?

418 A. Yes.

Q. It is headed, as I understand the translation, "Gloom upon Gloom," and it was published on the 3rd of August, 1917. It is a leading editorial, the head of a column on that date. See if I read the translation of that editorial correctly: "Gloom upon Gloom. The reader——

A. Hold on, stop. "Gray in Gray."

Q. When a German says "gray in gray," what does he mean? Does he mean "gloom upon gloom"? What does he mean; "grau in grau;" what does that mean?

A. Well, gray in gray.

Q. And when things are bright, they are not gray, are they?

What?
When things have a gray color we mean they are gloomy?
They are not bright, of course.
Then gloom is a fair translation?
Yes, it may be, but it is not "gray in gray." It is "gloom."
"Gloom upon Gloom." That is what I said.
It is not a literal translation.
No, it is not a literal translation. We are trying to translate
nse of these, are we not?
Sometimes we do.
When a Frenchman wants to say "That is a horse of another
" he says "That is another pair of shirt sleeves," but we all
understand that the phrase means the same thing in the two
languages, do we not? Now let us go on following that, please.
"The reader is invited to take a look at to-day's 'Tageblatt,'
this heat he has no time or desire to read it through from front
ck, he can content himself with reading the titles. With us,
ee, the headlines agree complete with the contents of the arti-
which cannot be claimed by most English newspapers. Often
fit like a fist on your eye. The news itself comes for the great-
art from anti-German sources. All together form a fabric for
urpose which is to make the German cause appear as hopeless
ssible. It is well known that the boa-constrictor coats its victim
slaver before it gets ready to swallow it. There is no lack of
in the camp of the allies, the swallowing, however, is another
. The German lion isn't dead yet; he is even so much alive
he can hold fast in Flanders and on the Aisne with two paws
dminister blows with the third in Galicia and Bukowina. Our
comes for the greater part from the camp hostile to Germany.
now let us take a look at today's collection. The military as
as the political. We shall commence with the former. The
ish troops have mostly gained the objective set for them, says
English report proudly. Before breakfast we read something
Then it was a matter of breaking through and driving the
ans out of France and Belgium. To-day we want to gain 'ob-
es,' these objectives are from one to two miles beyond the old
; between them lies the gloom of destruction. And this is the
great offensive of the year 1917! The new Russain Govern-
ment does not differ very much now from the old one of the
Tzar. It suppresses newspapers, it institutes wholesale ar-
among its opponents, it suppresses news, it has set up the gal-
again, it shoots down soldiers who will not allow themselves to
iven into the firing line, just as in former times. And if the
ar only had as much wit as old Emperor Ferdinand of Austria,
ould be able to say something similar to what the former said
he heard of Solferino, viz: 'Yes, we could have done that too.'
tor Kerensky is really sitting between two chairs; he wishes
ontinuation of the war and must therefore win the cadets. They,
ver, make the condition that he get rid of the social Democrats
e they would give their valuable services to their native country.
is to say, a few Socialists would be tolerated in the ministry

but only as an ornament; they would have to give up their connec
with their parties and accept no instruction from them. Where
the Council of the Working Men and Soldiers, with a cool s
pointed out to Kerensky that it would not be very healthy for
to try to get rid of them—the Council. And so Kerensky r ai
painful uncertainty. And he does not really need a mir , a
is Dictator. Did it really pay to depose the Czar? A dictator
have success, or it will soon be over with dictating. But Kere
has nothing but failures. He has often traveled over
421 whole front, and surely used all his oratory to persuade
soldiers to continue the war. The result, defeat in the n
at Smorgen, bad defeat in the interior at Pinsk, collapse in Ga
and Bukowina. And to all appearances it is going to be w
You can't carry a dog to the chase, you can't force the Russian
fight, if they don't want to. You can't make even Russians bel
their country is in danger when they have a continuous offe
peace. We are sorry for this Kerensky, but why did he under
the impossible? He will probably destroy himself and the rev
tion. He hopes for nothing more from Russia, exclaims Gen
Chief of Staff Maurice. So soon. Why it hasn't been long s
the Allies announced rejuvenated revolutionary Russia would n
a brilliant name and save the day. And now! Now the cal
'Samuel (not Samiel, note for the compositor) help! That is to
the American Uncle Sam. Until a short time ago they could
him time with his coming, but now it looks dangerous. Now i
'immediately if not sooner.' It is a great question whether the
lies will hold out in the West until next spring when the Ameri
Army is expected to be there. This is the way matters stand n
If, to round things off, we put in the additional lies, that the Eng
Workingmen's Party threatens to desert for the peace camp, that
Entente Socialists are going to Stockholm, that Balfour has
into Lansing's diplomatic soup, and declared the fore
422 fabrication of a constitution for Germany as ludicrous; t
the German Socialists have categorically declared to th
government: 'No Fourth Winter of War,'—the result is a pict
which the pacifist can view with nothing but comfort." What
your intent in writing that editorial; an intent to help America
the war?

A. I do not know that I had any particular intention.

Q. In other words, do you mean—I want to be fair to you, M
Werner—do you mean to say that that thing just flowed off yo
pen without your thinking what you were writing? Do you me
to say that that just ran off the pen without you thinking of wh
you were doing?

A. Oh, no, no, I was thinking a good deal.

Q. You were thinking a good deal?

A. Yes.

Q. How often had the Department of Justice been to visit y
and warn you about the things in the paper before that thing w
written?

A. I do not know of any visits.

Q. Let me see if I can help you. In whose handwriting is that? (Showing witness book.)
A. Not mine.
Q. No, I know, but whose?
A. I think it is Mr. Lemke.
Q. And what does it say?
A. "Department of Justice, Nelson übergeben."
Q. What is "übergeben"?
A. Some matters from the Department of Justice has been referred to Attorney Nelson.
Q. Who sits there? (Indicating.)
A. Yes.
Q. You know that the Department of Justice called on you on May 28th, do you not, called on you and saw you?
A. Maybe.
Q. Did it or did it not?
A. I do not know.
Q. Was there a representative of the United States Government, who said he was such, that called on you May 28th?
A. Is that this Hyatt business?
Q. I do not know who it was. Was there a Department of Justice agent there?
A. One was there and asked whether the employes were citizens or not. I do not know whether there was one on that particular day.
Q. Now let me read you another thing. Here is a page that is said to be in Mr. Lemke's handwriting. Is that Mr. Lemke's?
A. It is his.
Q. Now keep your eye right there, hold it right there, and I will read you the way I translate that, or have it translated. "The Tageblatt."—This is a report on June 25th to the directors, purports to be—"The Tageblatt is also growing very gratifyingly."
A. Yes.
Q. "This is principally to be ascribed to our powerful stand. Many Germans are not at all satisfied with the stand of the other German newspapers." What was your powerful stand?
A. There is nothing said about powerful in this thing.
Q. What do you read?
A. "Kräftig."
Q. What does "kräftig" mean?
A. Well, strong.
Q. What do you say, stiff?
A. Strong.
Q. We translated it powerful. "Our strong stand." I will put it that way. What was your strong stand?
A. I do not know what he meant.
Q. Read the next paragraph: "The Department of Justice has repeatedly visited us. We were taken by surprise, but as we are doing nothing contrary to law, no action was undertaken against us." Did you have any such report brought to your attention?
A. No. May I say one thing?

Q. Say anything you like.
A. There is a printing, a mistake. Instead of "L" it was "fügen," instead of "lügen."
425 Q. That is in the article "Grau in Grau"?
A. Yes.
Q. You have run your pencil around it?
A. Around an "L." That is to be an "F."
Q. That should be an "F"?
A. Yes.
Q. In the sentence, "So steht es jetzt. Lügen wir der Abrundu etc.?
A. Yes.
Q. And where it says "Lügen," it is a misprint?
A. Yes.

The Court: Let us get whether there is any change in the sens

By Mr. Roberts:

Q. Just let me read the translation. "This is the way ma stand now."
A. Yes.
Q. That is right?
A. Yes.
Q. "If, to round things off, we put in the additional l "Lügen"——
A. "Fügen."
Q. You said that should be "Fügen." What does "Füg mean?
A. Add. The correct translation is, adding to the finish——

Mr. Gray: "If, to round things off, we take into consideration following additional facts."

426 By Mr. Roberts:

Q. "If, to round things off," it ought to read, "we put in t additional facts," instead of "lies"?
A. Yes.
Q. It is correctly translated? "Lügen" does mean "lies," doe not?
A. Yes.
Q. Wait a minute; was it a mistake of the compositor that he "Lügen" for "Fügen"?
A. It was.
Q. Or did you write "Lügen"? It is "Lügen" there, is it not?
A. Was it a mistake of the compositor when you let it out 700,0 when it said 70,000?
Q. I did not make the Tageblatt say that. The printer prin the English that way.
A. You are not proof against mistakes.
Q. All right, we will let it go. I like the article still, even with t change.

A. In the article about conscription you let the Tageblatt say t the conscription was for 700,000 men, and on the next page you ve the German original of the Tageblatt and the Tageblatt says 000.

Q. That is right, you are perfectly right.

A. These things happen in the printing business.

Q. I am going to admit that this thing happened, and I am going to strike out "lies" and am going to put "facts" instead of "lies." Will that do it?

A. Yes.

Mr. Roberts: And the copy that goes to the jury is not going to ve that mistaken word in it at all.

By Mr. Roberts:

Q. Now when you headed that "Gray in Gray," what did you ean? Gray for whom, gloomy for whom?

A. I cannot say what I thought at that time.

Q. You did not mean gloomy for Germany, did you?

A. I do not know what I thought at that time.

Q. You do not know what you thought. Look at it carefully now nd see if you think that anybody who read that would think that ou meant gloomy for Germany. Look at it now, I say, and after ou have looked at it, see if you think that your readers that morn- g would consider that you meant that it looked bad for Germany, y saying "Gray in Gray" there?

A. The news was certainly bad for the Allies, for the opponents f Germany.

Q. That was not a news article, was it?

A. Yes.

Q. What?

A. No, that was an editorial.

Q. That is comment on the news, is it not?

A. Yes.

Q. Now was that editorial, in your judgment, calculated to encourage Germans who had sympathy with Germany, or was it calculated to encourage our struggling Allies and ourselves?

A. I had simply to comment on the news of the day, and the news f the day was unfavorable to the Allies and I stated these things. hat effect it might have, that is not my business.

Q. Is it necessary, when you are commenting on the news, to talk bout Balfour's spitting into Lansing's diplomatic soup?

A. That phrase might not be very elegant, but it may be true.

Q. It may be true?

A. Yes.

Q. You thought it was true, did you?

A. It was.

Q. Does this seem funny to you now? Does this seem a joke to ou now? I say, does this whole proceeding seem to you to be a oke now?

A. Not at all.

Q. Why do you laugh about it when I read you a phrase lik
that?

A. I am fighting for my liberty, for my life.

Q. Yes, I thought—not exactly for your life?

A. Well, yes. I am an old man. I do not like to die in a felon'
cell. It is a very serious business for me.

Q. Then why do you laugh about these articles?

A. No, I do not laugh at all, but you always ask me what
thought at that time. How can I know to-day?

Q. That you cannot tell this jury. Now I will give you th
newspaper, Government Exhibit 86 of August, 1917, and
429 will ask you to turn to the following article, of which yo
admit the authorship, and I will ask if I translate it correctly

"Mr. Elihu Root is an old man and ought to be able to bridle hi
tongue. But he cannot, because he is boiling with rage, and thi
rage must come out. Mr. Root is raging because of the failure of hi
Russian mission. This failure is not to be denied. It is so apparen
that not even an excuse for it can be given. The reason for i
among other things, lay in this: that a good many Russians hav
seen American with open eyes and had informed their countryme
what they thought of it. But that was for the most part a poo
introduction for Root, Russell and Company. Wherever th
Americans went, they always found that these American-Russian
had been there first. They had said to the people this America
a money-bag republic; its common people have had no more to sa
there than the Russians up to this time in their own country; the
are exploited there just as we are, and also shot down sometimes,
beware of the Americans, they bring us nothing good. So spoke th
American-Russians. It does not matter whether it was true or fals
The main thing is that the Russian Russians believed it and gav
the Americans such a cold shoulder as it is possible only in Russi
That is why Mr. Root is raging about the Russians in general an
the Russians in New York in particular, and no less, or rath
especially about the American Russians, that is to say about tho
of his country people who will not join him in blowing th
430 war horn. He expressed his rage in a speech made la
Wednesday, in which he said, among other things:—'The
are people who are going about the streets of the city this evenin
who ought to be brought here at sunrise to-morrow morning and sh
for treason. They accomplish their work under false pretense
they represent themselves to be for our land, and they lie every da
and in every word. They conceal themselves with a mantle of
plausible Americanism; and if we are competent and ripe for o
freedom, we will find them out and get rid of them.' 'We' will g
rid of them, to be sure that is easier than to get rid of the 'Huns,' b
'we' have, it is to be hoped, not yet so completely changed roles wit
Russia that 'we' should have become the despotism. In any case 'w
shall not let ourselves be driven upon the ram's horn and intimidate
by Root. Whoever rails, is in the wrong—that is an old discover
Mr. Root knows that the people whom he is baiting form the gre
majority of the population of the country, and this majority know
that Mr. Root is the attorney for Morgan, Schwab, Du Pont, Wes

inghouse, etc., and estimates him accordingly." Did you intend that to help the American people in the war at the time that was written in August?

A. I do not know what I intended.

Q. You do not know what you intended? When you said that, when Root was railing at traitors and treasonable people in
431 this country, he was railing at the most of the people in the United States, did you mean it?

Mr. Gray: He did not say that.

By Mr. Roberts:

Q. I will read it again. "Mr. Root knows that the people whom he is baiting," who were the traitors and the treasonable Americans——

Mr. Gray: That is your construction.

Mr. Roberts: I will so construe it in my question to this witness, and I will ask you not to interrupt.

Mr. Gray: I will interrupt you if you so construe it.

By Mr. Roberts:

Q. You say in that article, do you not, that the people whom Mr. Root is baiting form the majority of the population of the country?

Mr. Gray: As long as you put it in the form of a question, then I have no right to interrupt.

Mr. Roberts: But you are doing it anyhow.

A. Will you please read it again?

By Mr. Roberts:

Q. I will repeat it again. You say there that the people that Mr. Root it baiting form the great majority of the population of this country, do you not?

A. That is said here.

Q. Yes, you say it there, don't you? In other words, you mean that the people that Mr. Root called traitors there, the people
432 that talk American but act German, form the majority of the people of this country?

A. I did not say anything of the sort. You put that in.

Q. All right. Now I will read what Mr. Root said again: "There are people who are going about the streets of the city this evening, who ought to be brought here at sunrise to-morrow morning and shot for treason. They accomplish their work under false pretenses; they represent themselves to be for our land and they lie every day and every word. They conceal themselves with a mantle of a plausible Americanism; and if we are competent and ripe for our freedom, we will find them out and get rid of them." In the next sentence you say "Mr. Root knows that the people whom he is

baiting form the great majority of the population of the country." What do you mean by that?

Mr. Gray: He does not do anything of the kind. You say in the next sentence. There are three sentences intervening.

Mr. Roberts: You can interrupt all you please, I will get this clear before the Jury.

Mr. Gray: No, I think this Jury is entirely and absolutely satisfied that I am not trying to prevent the District Attorney from getting everything clear. I have aided him. But when he says in his question "You say in the next sentence so and so," and he does not say it and there are two sentences at least intervening, then I am going to interrupt him and object to his question, because
433 he does not state what is right.

The Court: In order to avoid any basis for objection, Mr. Roberts, of course you will observe the rule to make your questions real questions and not statements in the guise of questions.

Mr. Roberts: Surely.

By Mr. Roberts:

Q. Did you say, a few sentences further along, that Mr. Root knows that the people whom he is baiting form the great majority of the population?

A. That is said, yes.

Q. What did you mean by it?

A. I cannot tell what I mean, but this has nothing to do with the paragraph before, the people that are going around in New York. I said the great majority of the people in the United States, and he said the men were traveling this evening in the streets of New York.

Q. See if I have got this right. " 'We' will get rid of them." There is a quotation around the "we," is there not?

A. Yes.

Q. "To be sure, that is easier than to get rid of the 'Huns.'" What did you mean by that?

A. It is easier, of course, to get rid of people in New York than to get the Huns.

Q. You meant, in other words, that Mr. Root could fight an easy fight in New York, but it would take some going to beat
434 Germany, did you not ?

A. Something of that sort, yes.

Q. That is what I thought you meant. "But 'we'—quoted again—"have, it is to be hoped, not yet so completely changed roles with Russia that 'we' should have become the despotism." What did you mean by that?

A. It is not said here "despotism." It is "Czarenthum."

Q. What does that mean?

A. That means "Czardom."

Q. Does not that mean despotism? "That we should have become a Czardom," you say?

A. Yes.

Roberts: I am going to change that word to "Czardom."
Witness: There are many incorrectnesses in your transla-

Roberts: I am going to correct them all.
Witness: If you do, you will sit there until Christmas.

By Mr. Roberts:

"Exchanged roles with Russia that we should have become
Zardom?"
Yes.
All right. I think that means "despotism," but I will put it
Czardom." Now the best you can say about that is that you
ot know what you meant by that?
A. In writing this sentence I probably thought we are not that far in the United States that we can go about your enemies and treat them as the Czar does with his.
Oh, you meant that Mr. Root could not yet go around, or any-
else, and shoot traitors as they did in Russia?
Shoot people which he designated as traitors.
But you went on to say that the people which he designated
raitors constituted the great majority of this country, did you
?
That is another paragraph.
What is it? What did you mean by that?
That is the whole population of the country. Before he spoke
eople in New York. Do not confound these things.
Q. But whom did you mean by the people Mr. Root was baiting?
at is the language, "The people Mr. Root is baiting." Whom
you mean?
A. That Mr. Root is the lawyer or the attorney of Morgan,
wab, Du Pont and Westinghouse. It is plainly said.
Q. No, above that.
A. Well, what; what do you mean?
Q. "Mr. Root knows that the people whom he is baiting form the
eat majority of the population of the country."
A. That he is attacking.
Q. That is, the people he was attacking formed the great popula-
n of this country?
A. Yes.
Q. That is what I thought you meant. Now we have got it clear.
A. Yes.
Q. And this majority knows, you go on, that Mr. Root is
e attorney for Morgan, Schwab, Du Pont and Westinghouse, and
timates him accordingly?
A. Yes.
Q. I want to see if I have correctly translated an article which ap-
ears in the Tageblatt of the 22nd of July, 1917. It is in the
Spazier-Ganger," and starts "Roth heiszt," or words to that effect.
Have you it there?

A. Yes. I have already declined to say anything about it.
Q. No, you declined to say whether you wrote it.
A. I do not want to pose as an expert in translation.
Q. You have already posed as an expert. You have corrected me very properly two or three times.
A. I want the decision of the Court on that.

Mr. Roberts: He wants the decision of your Honor. I ask him to tell me whether I am translating an article correctly.
The Court: You are able to answer that question, I assume. You have the article before you and you will hear what he reads. You will know whether it is a correct translation into English.

The Witness: Well, I will try to follow him.

By Mr. Roberts:

Q. You will. I will go slow. "Roth is the name of the cur—
A. Hold on; "canaille."
Q. What is "canaille"?
437 A. "Canaille" is not "cur."
Q. What is it, "dog"?
A. No, no dog.
Q. What is canaille?
A. Canaille is canaille.
Q. How would you translate it so an Englishman would understand it?
A. I do not know. It is French.

Mr. Gray: It is a French word that has been incorporated into the English language.

By Mr. Roberts:

Q. I will change this so it will agree with what you say. "Roth is the name of the canaille"; is that right?
A. Yes.
Q. "And he was the American vice-consul at Plauen in Voigtland until the breaking out of the war. As a mitigating circumstance the Christian name of Curtis was allowed him which indicates that Roth was born in this country. He is therefore no mangy German dog, but an American rattlesnake. And that at least is a comfort. This Roth published an article covering a whole page in last Sunday's Ledger, the character of which is indicated by the title the Ledger gave it, viz: 'Stop the Neutral Exports to Germany, and a General Famine will put an end to the War.' 'Slowly starving the Central Powers are Trembling on the Brink of Revolution,' says
the ex-consul of Plauen. As an exception to the rule the title
438 is not misleading but literally expresses the contents of the
article. To make it stronger there are pictures too—and such pictures! Before the war, well fed, stout women with smiling faces, their well filled market baskets under their arms; during the war, a despairing, languishing, half-starved family sitting around an

table. The text is gloom upon gloom." That "grau in
seems to have been a favorite with somebody. "Slow but
tarvation, no salvation possible, and satisfaction added, show-
etween the lines. But to make the end by starvation more
and certain, this carrion buzzard urges that the blockade be
so strict that not a grain of food may get to Germany. If
s done, a hunger revolution will bring the desired glorious
y to those people who claim not to be at war with the German
e but only with their government. Now this fellow has been
ears in Germany enjoying himself. He has a German name,
bly knows a little German too and has in all probability traded
s Germanism. He speaks of his friendships among the man-
urers and exporters of the Saxon industrial city. The consul
f course an important personage to them on whose favor some-
depended. Added to this the sympathetic respect, which the
ans had for Americans any way, but which they have, we hope,
got rid of. Mr. Roth also doubtless played an important
society role in Plauen, was introduced into the best families
and treated with attention and favor. Now this man—beg
pardon for calling him that—wishes the starvation, the literal
ing to death of the people among whom he lived, who esteemed
from whom he filled his pockets. Words cannot properly ex-
the depth of contempt which one feels for such unspeakable
ness. Therefore we add him to Gerard, Ackerman, and other
krakers whom, however, this cur Roth far surpasses in moral
adation."

. "Canaille" again.

. "Canaille," not "cur." All right. That is a correct transla-
with that change?

. On the whole, yes. Not very fine, but——

. Not very fine?

. No.

. I want to ask you a question about that. Did you write that
le?

.. I decline to answer.

Ir. Roberts: I ask your Honor that you order him to answer.

The Court: Mr. Roberts, is there any occasion to press that ques-
n any further? We have already ruled that there is evidence
n which the Jury may draw an inference. He has denied the
horship or knowledge of certain articles. He does not deny
horship or knowledge of that article.

) By Mr. Roberts:

Q. You have said that you wrote the "Spazier-Ganger" ordinarily?

A. When I was there.

Q. And you also said you wrote editorials habitually?

A. Yes.

Q. And you also said you looked things over generally in the
per?

A. Yes; not the paper, in the business.

Q. The publication?
A. Yes.
Q. You did not have anything to do with the business manag ment, did you?
A. No.
Q. You said that that one that was published on the 18th of Jul 1917, called "Bilanz von 1916," was plate matter?
A. Yes.
Q. Look at the heading of that matter and see if I translate correctly.
A. Yes.
Q. "Review of 1916. The military successes of the Germans i the previous year."
A. Yes.
Q. "All offenses of the Allies smothered in streams of blood That is the way it reads, does it not?
A. Yes.
441 Q. Now you say that a compositor took and stuck that i the paper without your knowing it, do you?
A. Certainly he did.
Q. Where did this stuff come from?
A. From the American Press Association.
Q. And that was a pro-German affair?
A. I do not know what it is.
Q. No, I want to know about it. Do you not know that that wa a German Press Association?
A. Oh, no. Hold on, that is a big American business. That i run by Americans, is situated in New York, has branches in all th large cities of this country, furnishes news of all sorts, plates of al sorts, to Republican and Democratic and Prohibition and religiou papers, all sorts of things, and has a German department and sen this out. I see it by the style of the titles, and you see that is not type, it is not Tageblatt set up.
Q. Did you see that article in the paper?
A. I do not know whether I saw it.
Q. Did you read it?
A. No, I do not remember whether I read it.
Q. You will not say that you either saw or read that article?
A. I cannot say.
Q. Either before or after it was published?
A. I cannot say anything.
Q. If you had known that that article was going in, bein
442 the good American that you are, would you have publishe the article with the contents that that has, with "all offense of the Allies smothered in streams of blood"?

Objected to. Objection sustained.

The Court: You can ask him, however, whether he did raise any objection to it.

By Mr. Roberts:

Q. Did you, as a matter of fact, object to that article at any time?
A. I did not know it was printed. I had nothing to do with it.
Q. I want to get that clear. You did not know that there ever appeared an article like that in the paper; you did not know of that article being in?
A. Only as my attention was called to it now, or in the indictment I guess I read it. No, it is not in the indictment.
Q. Did you read your paper on July 18, 1917?
A. I often did not read all that is in the paper; no editor does that. He is glad to be out of it.
Q. You say you usually write the "Spazier-Ganger"?
A. Yes.
Q. I show you the "Spazier-Ganger" in the issue of the 22nd of June, 1917, and I show you an article there appearing, starting off "Zei dankbar."
A. Yes.
Q. I want to know if I translate it correctly.
443 A. Am I to serve again?
Q. If you will, please.
A. I decline. I do not think I have anything to do with that. If you want somebody to investigate your translations, get somebody else. I am not hired for that purpose.

The Court: Mr. Roberts, you can state that you are about to give what you understand is a fair translation. He has the article before him and he can make a comparison if he chooses, to know whether the translation is correct.

Mr. Roberts: I am trying to be fair to you, sir, by reading a translation and asking if it is correct.

Mr. Gray: I object to the question, for this reason: the witness has said that he had nothing to do with it, or——

Mr. Roberts: I beg your pardon, he has not said any such thing.

Mr. Gray: Will you pardon me? I had an "or" there. This witness said he had nothing to do with it or he did not know who was responsible for its insertion; I do not know which. What I do know is that he did not say that he was responsible for it. That is what I mean.

The Court: What is the date of it?

Mr. Roberts: June 22nd, sir.

Mr. Gray: Now, your Honor, in that situation, Mr. Roberts having offered in evidence a translation, which we, at least at the present time, are not attacking in any way, he asks this witness to
444 simply act as a translator and check up the other translation. Now that is not cross-examination. I did not object to it until this time, because when I put a defendant on the stand I want to allow the Government every possible opportunity to examine him. But it does seem to me that, when it is only for the purpose of again reading before the Jury the article itself, it is not proper cross-examination to simply ask this witness, who was not asked anything

about the translation of these articles, to say whether or not h
expert's translation is correct.

The Court: I assume that the question was addressed to the witne
in order to give him an opportunity to correct, if there was occasio
to correct, what counsel understands to be a fair translation. W
will not require the witness to serve in that capacity if he does n
choose to do so. The opportunity is offered to him to have th
assurance. Now you may state what you understand to be t
correct translation and ask any questions that you have to ask hi
concerning it. If the witness desires to check up your version of t
proper translation, he may do so.

The Witness: I do not desire.

By Mr. Roberts:

Q. I have a translation here, which I must necessarily read to yo
before I can premise a question on it. I believe it to be a corre
translation, my translation of that article, and before I give you th
I want to ask you, where were you on the 22nd of June, 191
445 A. Probably at Atlantic City.

Q. When you say probably, I want you to be carefu
about it.

A. Yes.

Q. If you were at Atlantic City on that date, you were at wha
hotel?

A. Gage Hotel?

Q. And where is that?

A. On Missouri Avenue.

Q. Is that a hotel that has a register?

A. I do not know.

Q. Did you not register when you went there?

A. I think I did.

Q. It has an office?

A. Has an office, yes.

Q. And a registry book?

A. Yes.

Q. And if you were there, you registered?

A. Yes.

Q. You think you were there on the 22nd of June?

A. I cannot say it for sure, on what day I was there. I was there
about a week before the Fourth of July.

Q. That would not be the 22nd of June, sir.

A. It may be I was not there. I do not know. I cannot tell for
certain.

Q. I will find out before to-morrow accurately, so that we can get
you straight on your dates, but I want to now read you this
446 translation.

Mr. Gray: I ask that Mr. Roberts put his question first and
let us see whether it is important. The translation is in evidence
and may be read to the Jury at the proper time.

Mr. Roberts: The Jury has not heard it yet.

Gray: They have a right to hear it and will hear it, but I he question should precede it.

Court: But the question, as I understand it, is predicated he article, the contents of the article.

Roberts: I cannot ask him what he meant by the last line anslation that I hold in my hands and that he does not see. ld be unintelligible to ask him that.

By Mr. Roberts:

This I have translated this way: "Be thankful. It is the duty nkind to help where one can and in this sense we have given eration in every respect to the wishes of our friends the Allies. llies wanted money and they got it—they wanted ships and t our fleet—they wanted more ships and we are building them greatest possible speed. Our friends wanted wheat as well as foodstuffs and we gave it—barley likewise so that the poor shmen could have their accustomed beer—and they will get it. wanted soldiers. By conscription an army of a million will ickly raised as if from the ground. Last of all, they cable us your school boys,'—American's high schools are to supply air men—and they will get the flower of our nation as well. One thing only have our friends not asked for and for that we should be thankful to them. The Allies have not yet nded our wives and daughters! Let us thank them that they left us these, some sunshine is still left us." Do you remember ng that article?

I did not write it.

You did not write it?

No.

Did you know of its appearance in the "Spazier-Ganger"?

No.

You have a certain style of writing, have you not?

I suppose.

You can recognize your own composition, almost, by the sen- s and the language, can you not?

I am not so certain. I am not so proud of originality.

Do you say now you did not write that article?

I say I did not write it.

When Mr. Gray asked you you said you could not state. ch is correct?

Since we have gone over it repeatedly——

Since we have gone over it repeatedly, you recognize it is not of yours?

Of course. I get surer now.

I show you the paper of Sunday, the 4th of August, 1917. Were you in Philadelphia at that time?

A. I cannot say.

Q. Why cannot you say? Where would you have been ou had not been in Philadelphia?

Probably in the country.

Q. What part of the country?
A. The State of Pennsylvania.
Q. What place?
A. In the State of Pennsylvania.
Q. Tell me where in the State of Pennsylvania?
A. For instance, my brother-in-law.
Q. Where was that?
A. On a farm in Montgomery County.
Q. Whereabouts?
A. Oh, I do not say I was there at that time.
Q. I know you don't. Let me get the full name and the pl
What is his name?
A. His name is Herman Behr.
Q. B-e-h-r?
A. Yes.
Q. And where is his place?
A. His place is near Lansdale, Pennsylvania.
Q. And you say you were there on the 4th of August?
A. I did not say. I said I may have been there.
Q. I have shown you there an editorial. Where does that
torial appear, in what column? Where does it appear?
A. On the fourth page.
449 Q. And the first editorial, is it not?
A. Yes.
Q. And you said to this Jury some time ago that you always w
the first editorials, but sometimes the second or third were cop
did you not?

Mr. Gray: Pardon me, I must object to that. He did not
anything of the kind.
Mr. Roberts: I am asking if he did not say so.
Mr. Gray: No, you are quoting testimony, and when you
with the apparent stamp of your official position back of it, that
said that, the Jury sometimes takes your recollection. That is
true. He said that the first editorial was usually written. That
the paper was responsible; and the others were clipped, but he
not say that he invariably wrote the first editorial.

By Mr. Roberts:

Q. I will just ask you this: will you please tell me of a sin
editorial that you know of, between June 15th and Septem
10th—I mean a head editorial, at the top of the first column—t
you did not write?
A. If you give me a file of the paper I will look all through a
see.
Q. I will ask you to do that at recess. I have the entire file h
and I will ask you to point out any leading editorial at the top
the first column of the editorial page, in that whole period, that y
did not write.
A. All right.

Mr. Gray: Now, if your Honor pleases, I will say this, that we will do it for Mr. Roberts at the first convenient time, to ask a man of his age, who has been on the stand all morning will have to come back after recess, to spend his time during

Mr. Roberts: I do not think he will have to come back. I will through with him in a minute.

By Mr. Roberts:

Q. Do you know of any person having written a leading edi- ial in any edition from June 15th to September 10th except rself?

A. I cannot answer before I see the paper.

Q. No, you do not get my question. Do you remember an oc- ion all that summer when Darkow or somebody wrote the leading torial?

A. When I was away there appeared editorials in the paper.

Q. Did you not send editorials in, or leave them there before you nt away?

A. That Fourth of July I did.

Q. Other times too?

A. Certainly not, not written stuff, I did not.

Q. You were away a little while before the Fourth of July, you id?

A. Yes.

Q. About a week?

A. Yes.

Q. And you left the editorial for the Fourth before you went away?

A. Yes.

Q. Who wrote the editorials, to your knowledge, between the time u went away and the Fourth of July?

A. I have a suspicion that they were not written at all in the fice.

Q. You have a suspicion that somebody clipped them?

A. That is it.

Q. Now then, is that editorial that is before you your work?

A. I did not write that.

Q. Have you ever seen it before?

A. I do not remember, but I have seen it—I guess it is in one of ese books here.

Q. It is in one of them?

A. Then I must have seen it.

Q. You do not remember it at all?

A. I did not remember it until I saw it in the book.

Q. You say that your policy right straight through—I am not oing to take you over that editorial, you say you do not remember —you say that your policy as an editor of the paper was deter- ined only by yourself?

A. Yes, sir.

Q. Nobody ever discussed what the policy of this paper should with you?

A. Nobody? Well, I had talks with my friends and so

452 Q. Who, Darkow?

A. With everybody.

Q. About what the policy of the paper should be?

A. No, no; that was my affair.

Q. Your affair solely, was it?

A. Solely.

Q. You are the man that determined the policy of this paper, a Darkow took orders from you about that, did he?

A. He did not take orders. I did not give him any orders.

Q. He knew what your policy was, then, did he?

A. You had better ask him whether he knew.

Q. No, I am asking you, Mr. Werner.

A. I do not know whether he knew.

Q. You do not know. Well, that is an answer. Now then, y say that this paper had always been practically a society paper un the war broke out?

A. Yes.

Q. Then came an exigency where it had to change it characte

A. Yes.

Q. How did it have to change its character and why?

A. Because we were forced to deal with other matters than socie

Q. Why?

A. Because the war interested everybody. Society life became most extinct.

453 Q. Exactly; but you say that the war news was exactly t same in the English papers and that all your readers re their war news out of the English papers. Then why did you ha to change to a war news paper too?

A. Why, of course, there are not all Germans so far as can re English. There are many read a little bit, may understand t title, or simple affairs or so on, but not long things in the Engli language and such things.

Q. They could not read?

A. They can read about fires or simple matters, but these thin had to be given. Besides, we had no other stuff. There was not ing coming but war affairs.

Q. Then you understood that what war editorials and war news y published, you published for a very limited class, namely tho who could only read German, and whose sympathies would nat rally be with Germany, did you not?

A. I cannot——

Q. Can you not answer that question?

A. I cannot control the readers. I do not know what they rea

Q. I know you cannot, but I say you knew and understood wh the class was? You have just defined it to me, have you not?

A. Others have read it undoubtedly. Others want to know wh the paper says.

Redirect examination.

By Mr. Gray:

You said in the early part of your examination, I think in the part of your cross examination, that the various editors put they wanted in the paper?

Yes.

With no measure of responsibility to anyone else. Did the editors show you what they intended to put in?

No.

Was there any general understanding among the various rs as to any definite policy that the paper was to pursue?

No.

So that what you may have put in you were personally responsible for and the same rule applied to the others?

Yes.

Mr. Roberts: Just do not answer that. I object to this as not redirect examination and highly leading and suggestive.

The Court: I think it is sufficiently close to the line to be proper cross examination, but, Mr. Gray, it is open to the objection of being leading.

By Mr. Gray:

Q. The articles which you say that you were responsible for were articles with reference to the Fourth of July?

A. Yes.

Q. The one of which the title has been interpreted or translated "Gloom upon Gloom," and the article which begins with the name of Mr. Root; is that correct?

A. Yes, that is correct.

Q. Personally, Mr. Werner, during the early months of the summer of 1917, after the United States had declared war, were you one of the men that were characterized as a pacifist or not?

A. I think I was characterized as such.

Mr. Roberts: If your Honor please, I move to strike that out. I do not think that what he was characterized as by others is admissible. I did not get a chance before the answer was given.

Mr. Gray: I do not particularly refer to what others characterized him as.

The Court: If he knows what he was in the estimation of others, I assume he does know, he may so state. I do not see any objection to that.

By Mr. Gray:

Q. Did you or did you not favor the entry of the United States into this world war?

A. I did not favor it.

Q. Did you at any time, in the publication of your newspaper or in any other way, ever do any act or publish any article with the

intent, however, to interfere with the entry of the United State
the war, or the things which were made necessary by its entr
the war?

A. I did not.

Q. In other words, what I want to know is, was yo
456 position to the United States entering the war a passi
position, or did you endeavor to do anything to kee
United States from being successful in the war?

A. It was purely passive.

Recross-examination.

By Mr. Roberts:

Q. By the way, is it not a fact that prior to the entry
United States into the war you were characterized as a pro-Ger

A. Hold on. Repeat that, please?

Q. (Question read.)

A. Not at all. On the contrary. The Tageblatt was in ver
grace——

Q. No, you.

A. I am the editor of the Tageblatt. I speak through the
blatt. So now: as for me personally, I came here from a Ge
prison to this country directly, and so that shows I was not in
grace with the authorities at that time, and they managed to
the period of the statute of limitations, which runs usually five
for four times in order to keep me out of Germany, and then
refused—then the Tageblatt was denied the use of the ma
Germany for 20 years, and I was an anti-Prussian all my life,
time when many nice Americans hobnobbed with the Emperor
many rich Americans tried to marry off their daughters t
Prussian beggar barons.

457 Re-redirect examination.

By Mr. Gray:

Q. You have stated that you came here from a German priso

A. Yes.

Q. So that the Jury may know whether you had committed
crime which was a crime in itself, a crime which was malo in s
want you to tell the Jury why you were in a German prison, br
I do not want a long history of it.

A. I understand. It was for articles published in the paper.

Q. Articles published in the paper there as against Prussian
is that correct?

Mr. Roberts: Oh, if your Honor please, I must object to that.

The Court: That is suggestive, Mr. Gray.

Mr. Gray: It certainly is suggestive, but it is only what he
already said.

Mr. Roberts: No, he has not said it.

By Mr. Gray:

Q. I will have to let you explain in detail. I thought I could cut short, that is all.
A. That is all?
Q. No, I want you to tell us in detail—it becomes necessary because Mr. Roberts will not let me shorten the matter—I want you to tell us in detail what the charges were against you, what you were doing in prison, how you came to go there and then how you came to come to America.
A. I had 18 cases pending in court against me, all for articles written in newspapers and for one speech. The main thing was the crime of lèse-majesté for having said that a monarchy by the grace of God was a nonsense.
Q. That monarchy by the grace of God was nonsense?
A. Yes. I got out of the prison on a technicality. You understand, there was a Draconic law that was made by Bismarck, after two men had shot at the Emperor, and he suppressed papers by the hundreds, and the committee, the press committee of the party to which I belonged, the Social Democratic Party, wanted to get rid of the single men, because they had to support the man out of a job now, the newspaper man out of a job, the married men, and so they advised the single ones if they could get out of the country, they would do it, and I was one of them.
Q. In other words, the offenses for which you were arrested had to do with your characterization of the German monarchy?
A. That is it.

At 1 o'clock p. m. a recess was taken until 2 o'clock p. m.

2 o'clock p. m.

Present: Parties as before noted.

Mr. Gray: If your Honor pleases, Mr. Roberts has consented, with your Honor's permission, that we may call out of order some of our character witnesses. I thought we might be able to use them today, and we find some difficulty about getting them back.
The Court: I think that is a very good suggestion. They ought to be relieved.

EDWARD A. SCHMIDT, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. Where do you live?
A. 254 West Wellens Avenue, Olney.
Q. What is your business?
A. I am a display manager. Window dressing.
Q. Of what?

A. Show windows and decorations.
Q. Show windows and decorations?
A. Yes.
Q. Do you mean you are in business for yourself?
A. No, sir. I am employed by M. Silverman & Sons, northw
corner of 6th and South Streets.
Q. Do you know Mr. Werner?
460 A. I do.
Q. How long have you known Mr. Werner?
A. I have known him for about ten or twelve years. Probal
longer.
Q. In a business way, or as a neighbor, or how?
A. No. I have known him through the paper, and heard h
speak several times, and know of him.
Q. Do you know other people who know him?
A. Yes.
Q. Among those who know him, what is his reputation as l
abiding citizen? Good or bad?
A. Good.
Q. Do you know any of the other defendants?
A. I do.
Q. Who do you know? Who do you know other than
Werner?
A. I know Mr. Lemke.
Q. You know Mr. Lemke?
A. Yes.
Q. Anybody else?
A. Dr. Darkow, and I know Mr. Vogel and Mr. Schaefer.
Q. You know them all?
A. Yes, sir.
Q. How long have you known Mr. Lemke?
A. Mr. Lemke I have also known probably longer than
Werner.
Q. About how long?
A. About, I think, fifteen years. Even more than fifte
461 years.
Q. Fifteen years?
A. Yes.
Q. Do you know others that know him?
A. Yes.
Q. Among those who know him, what is his reputation as a la
abiding citizen? Good or bad?
A. Also good.
Q. How long have you known Dr. Darkow?
A. Dr. Darkow I have known, I cannot tell you exactly how lo
I have known him, but I have known him many years. Sever
years, I should say.
Q. Do you know other people who know him?
A. I do.
Q. Among those who know him, what is his reputation as a la
abiding citizen? Good or bad?

A. Also good.
Q. How long have you known Mr. Vogel?
A. Mr. Vogel, I have known him, I could not tell you how long, but I have known him somewhere around eight or nine years.
Q. Do you know others who know him?
A. I do.
Q. Among those who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. Also good.
Q. How long have you known Mr. Schaefer?
462 A. Mr. Schaefer I have known about the same time.
Q. Do you know others who know him?
A. I do.
Q. Among those who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. Also good.
Q. Good?
A. Good.

Cross-examined.

By Mr. Roberts:

Q. How old are you?
A. I am thirty-nine years.
Q. Were you born in this country?
A. No, sir.
Q. Where?
A. I was born in Germany.
Q. Are you a naturalized citizen?
A. I am.
Q. You say you know Mr. Werner through the papers. What paper?
A. Through the Tageblatt.
Q. What is your connection with the Tageblatt?
A. I have no connection. I used to read it.
Q. You read the Tageblatt?
A. Yes, sir.
Q. And you did not meet Mr. Werner through reading the Tageblatt?
463 A. No, but I have met in the Labor Lyceum.
Q. In the Labor Lyceum?
A. Yes.
Q. What is that? An allied labor meeting place?
A. No, it is where the allied unions meet, and I met him there very often.
Q. What is Mr. Schaefer's business?
A. Mr. Schaefer is also affiliated with the Union. I don't know exactly his business, but I know he belongs——
Q. Just think a minute. You know what his business is, don't you? Is not he a business representative and delegate of one of the Unions?

A. I think he is for the brewers' union.

Q. You say you know him very well and you know other people who know him. You know him well enough to know what his business is accurately, don't you?

A. Not exactly, but he is treasurer—I know he is affiliated with one of the unions.

Q. Prior to June 15, 1917, with whom did you ever discuss Mr. Schaefer's character? Anybody?

A. I don't think there was any—I know that Mr. Schaefer held a position in the Labor Lyceum.

Q. In the Labor Lyceum?

A. Yes. I don't know whether he was treasurer, or something, and I got there, anyhow, and I was speaking about him, and I know he had a good reputation.

464 Q. A good reputation. In other words, as to financial matters, that he was honest financially?

A. No, also as a delegate for the union.

Q. A good delegate for the union?

A. A good honest man, yes.

Q. What about Vogel? When did you ever discuss Vogel with anybody?

A. About the same as Mr. Schaefer.

Q. You knew Vogel was connected with trade unionism?

A. I did.

Q. In what way?

A. He also had a position in the Labor Lyceum, but I don't know whether it was—I know he had an executive position. Whether he was treasurer I don't know, because I myself am not affiliated with any labor unions.

Q. And how did you happen to get to know Dr. Darkow?

A. Dr. Darkow is a very good musician, and I belong to several glee clubs, and Dr. Darkow was known there as an umpire for the contest.

Q. An umpire for the singing contest?

A. Yes.

Q. And that is the way you came to know him?

A. Yes.

Q. And you feel that that gave you knowledge of his character sufficient to say that you could say he was a good man?

465 Mr. Gray: I asked him not about character. My friend draws a distinction between character and reputation. Reputation means what a man is thought of in the community.

Mr. Roberts: That is quite right.

By Mr. Roberts:

Q. That was the basis of your testimony?

A. Yes, sir.

)WARD J. McMAHON, having been duly sworn, was examined testified as follows:

By Mr. Gray:

. Where do you live?
. 2223 Fontaine Street.
. What is your business?
. President of the Building Trades Council of Philadelphia. layer is my trade.
. The Building Trades Council is composed of what?
. Of individual unions working on buildings, plumbers, steam-rs, carpenters, and different other trades working on buildings.
. And these different various unions are allied together in the ncil known as the Building Trades Council?
. That is correct.
. An unincorporated or incorporated association?
. An unincorporated association.
Q. You are the president of that?
A. Yes.
Q. And have been for how long?
. I have been president of the Building Trades for about four rs.
. Do you know Mr. Werner?
. No, sir.
. Do you know Mr. Darkow?
. No, sir.
. Do you know Mr. Lemke?
. No, sir.
. Do you know Mr. Vogel?
. Yes, sir.
. How long have you known Mr. Vogel?
. I have known Mr. Vogel for about fifteen years.
. Do you know other people who know him?
. Yes, in the labor movement.
. In the labor movement?
. I know him.
. Among those who know him, what is his reputation as a law-ding citizen? Good or bad?
. I have always heard of him as being a very good citizen.
. You have always heard of him as being a very good citizen?
. Yes.
. Do you know Mr. Schaefer?
A. Yes, sir.
Q. How long have you known him?
A. About the same time.
. And you know other people who knew him?
. Yes.
. And among those who knew him, what is his reputation as a w-abiding citizen? Good or bad?

A. Spoken of as Mr. Vogel. Very good. Very good to my kno edge.

Cross-examined.

By Mr. Roberts:

Q. They are both connected with some German branch of labor union, are they not?
A. I am not connected with any German branch.
Q. I say, not you. I say they.
A. Yes, I believe they are.
Q. They are connected with some German local that has affiliation with the whole body in Philadelphia?
A. I cannot say. Of course, there are Germans that belong the brewery workers, and of course a large proportion of them Germans, but there are other nationalities as well as Germans in brewery workers.
Q. These two gentlemen represent the brewery workers in main body?
A. In the Central Labor Union. That is where I have kno them for the last fifteen years.

468 FRANK FEENEY, having been duly sworn, was examin and testified as follows:

By Mr. Gray:

Q. Where do you live?
A. 708 South 52nd Street, Philadelphia.
Q. What is your business?
A. International President of the Elevator Constructors' Union.
Q. That is a labor organization?
A. Yes.
Q. And do you know Mr. Werner?
A. No.
Q. Do you know Mr. Darkow?
A. No.
Q. Do you know Mr. Lemke?
A. No.
Q. Do you know Mr. Vogel?
A. Yes.
Q. How long have you known Mr. Vogel?
A. I judge aobut eighteen or twenty years.
Q. Do you know other people who know him?
A. Yes.
Q. Among those who know him, what is his reputation as a la abiding citizen? Good or bad?
A. I think it is good. I have never heard anything to the co trary.

469 Q. And do you know Mr. Schaefer?
A. I do.
Q. How long have you known Mr. Schaefer?

A. About the same length of time.
Q. Do you know other people who know him?
A. Yes.
Q. Among those who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. I would say good.

(No cross-examination.)

FRANK SCHNEIDER, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. Where do you live?
A. 4335 North 9th Street.
Q. What is your business?
A. Secretary and Treasurer of the International Union of Elevator Constructors.
Q. That is the Union Mr. Feeney is the president of?
A. Yes, sir.
Q. Do you know Mr. Werner?
A. No, sir.
Q. Do you know Mr. Darkow?
A. No, sir.
Q. Do you know Mr. Lemke?
A. No, sir.
Q. Do you know Mr. Vogel?
A. I do.
Q. How long have you known Mr. Vogel?
A. 15 years.
Q. Do you know other people who know him?
A. I do.
Q. Among those who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. Good.
Q. Do you know Mr. Schaefer?
A. I do.
Q. How long have you known him?
A. The same period.
Q. Do you know others who know him?
A. I do.
Q. Among those that know him, what is his reputation as a law-abiding citizen? Good or bad?
A. Good.

(No cross-examination.)

EDWARD KEENAN, having been duly sworn, was examined a testified as follows:

By Mr. Gray:

Q. Where do you live?
A. 1427 North Marshall Street.
Q. What is your business?
A. I am a machinist by trade, but I am President of the Cent Labor Union.
471 Q. You are President of the Central Labor Union?
A. Yes.
Q. What is the Central Labor Union? What kind of a body?
A. It is a delegate body composed of representatives from all lo Unions in the City of Philadelphia and vicinity.
Q. All local Unions just in certain branches of business, or other respects?
A. Any of the local Unions who are a part of the Americ Federation of Labor are eligible to have delegates seated in the C tral Labor Union.
Q. You are President of that body?
A. Yes.
Q. Do you know Mr. Werner or Mr. Darkow or Mr. Lemke?
A. No.
Q. You know Mr. Vogel?
A. Yes.
Q. How long have you known Mr. Vogel?
A. Oh, over ten years.
Q. Do you know others who know him?
A. Yes.
Q. Among those who know him, what is his reputation as a la abiding citizen? Good or bad?
A. I have always heard very good. Personally I do not know an thing to the contrary.
Q. How long have you known Mr. Schaefer?
A. About the same period.
Q. Do you know others who know him?
472 A. Yes.
Q. What is his reputation as a law abiding citizen? Go or bad?
A. It is about the same as Mr. Vogel.
Q. The same as Mr. Vogel?
A. Yes.

(No cross-examination.)

HARRY SCHUELIE, having been duly sworn, was examined an testified as follows:

By Mr. Gray:

Q. Where do you live?
A. 4023 North Darien Street.

What is your business?
am Business Agent of the Bottlers' Union.
You do not know Mr. Werner or Mr. Darkow or Mr. Lamke,
?
do not, only seeing them several times, meeting them here
ere, but I never had any business with them.
You do not know any of their friends?
No.
So that you cannot tell us anything about their reputation?
No, sir.
Do you know Mr. Vogel?
Yes, sir.
How long have you known him?
Ten years.
Do you know others who know him? Do you know other
people who know him?
A. Yes, sir.
Q. Among those who know him, what is his reputation as
abiding citizen? Good or bad?
Good.
How long have you known Mr. Schaefer?
About the same number of years.
Do you know others who know him?
Yes.
Among those who know him, what is his reputation as a law-
ng citizen? Good or bad?
Good.

No cross-examination.)

C. PARKER, having been duly sworn, was examined and testi-
as follows:

By Mr. Gray:

What is your business?
Steward of the United Trade Association.
What is your position as steward?
I take care of a large hall, the Assembly Hall, where labor
nizations meet.
For how long have you been such?
22 years.
Do you know Mr. Werner?
Yes, sir.
How long have you known Mr. Werner?
A. I guess upwards of twenty-five years.
Q. Do you know other people who know him?
A. Yes, sir.
Among those who know him, what is his reputation as a law-
ding citizen? Good or bad?
A. Always been very good.
Do you know Dr. Darkow?

A. Yes.
Q. How long have you known him?
A. Not so long. Probably five years.
Q. Do you know others who know him?
A. I cannot say that I do.
Q. Do you know people who are mutual acquaintances?
A. Yes. I know people who are mutual acquaintances.
Q. And among those who know him, what is his reputation law-abiding citizen? Good or bad?
A. Always been good.
Q. Do you know Mr. Lemke?
A. Yes, sir.
Q. How long have you known Mr. Lemke?
A. Probably as long as I have known Mr. Werner.
Q. Upwards of 25 years?
A. Yes, I should think so.
Q. Do you know others who know him?
A. Yes.
Q. Among those who know him, what is his reputation as a abiding citizen?
A. Very good.
475 Q. Do you know Mr. Vogel?
A. Yes, sir.
Q. How long have you known Mr. Vogel?
A. Twenty years or more, any how.
Q. Do you know others who know him?
A. Yes, sir, I do.
Q. Among those who know him, what is his reputation as a abiding citizen?
A. Very good.
Q. Do you know Mr. Schaefer?
A. Yes, sir.
Q. And for how long?
A. About the same period. Twenty years, or better.
Q. Do you know others who know him?
A. Yes, indeed.
Q. Among those who know him, what is his reputation as a abiding citizen?
A. Always been good.

(No cross-examination.)

HERMAN KREIMER, having been duly sworn, was examined a testified as follows:

By Mr. Gray:

Q. Where do you live?
A. 1421 Faun Street.
Q. What is your business?
A. Cigar manufacturer.
476 Q. Do you know Mr. Werner?

A. Yes.
Q. How long have you known him?
A. Oh, as long as I am in the City here. 1883.
Q. Since 1883?
A. Yes.
Q. Do you know other people who know him?
A. Yes, plenty.
Q. Among those who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. Very good.
Q. Do you know Dr. Darkow?
A. I know him.
Q. For how long?
A. Oh, about two years.
Q. Two years?
A. Yes.
Q. Do you know other people who know him?
A. Yes, sir.
Q. Among those who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. Good.
Q. Do you know Mr. Herman Lemke?
A. Yes, sir.
Q. How long have you known him?
A. Oh, twenty to ternty-five years, or more.
Q. Do you know others who know him?
477 A. Yes, sir.
Q. Among those who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. Very good.
Q. Do you know Mr. Vogel?
A. Yes.
Q. How long have you known Mr. Vogel?
A. About just as long. Twenty or more years.
Q. Do you know otheres who know him?
A. Yes.
Q. What is his reputation as a law-abiding citizen?
A. Very good.
Q. Do you know Mr. Schaefer?
A. Also.
Q. For how long?
A. Oh, about 15 or 20 years, or more.
Q. Do you know others who know him?
A. Yes, sir.
Q. Among those who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. Very good.

(No cross-examination.)

SAMUEL HYMAN, having been duly sworn, was exami
testified as follows:

By Mr. Gray:

Q. Where do you live?
478 A. 431 Tabor Road.
Q. What is your business?
A. Printer.
Q. Do you know Mr. Werner?
A. Mr. Werner, yes, sir.
Q. Do you do any printing for them, or work for the pap
A. No, we are not at the present time.
Q. Did you at one time?
A. Years ago, yes, sir.
Q. Are you in business for yourself as a printer?
A. Yes, sir.
Q. How long have you known Mr. Werner?
A. Mr. Werner I have known about twenty-five years.
Q. Do you know others who know him?
A. Yes.
Q. Among those who know him, what is his reputation a
abiding citizen? Good or bad?
A. Very good.
Q. Do you know Mr. Darkow?
A. Yes, I know him.
Q. How long have you known him?
A. About 15 years.
Q. Do you know others who know him?
A. Oh, yes.
Q. What is his reputation as a law-abiding citizen?
A. Very good.
Q. Do you know Mr. Lemke?
479 A. Mr. Lemke, yes.
Q. Do you now others who know him?
A. Yes.
Q. How long have you known him?
A. About 20 years.
Q. What is his reputation as a law-abiding citizen?
A. Very good.
Q. Do you know Mr. Vogel?
A. I cannot say I know him. I know of him——
Q. If you do not know him, just say so. Do you kno
Schaefer?
A. The same way.

(No cross-examination.)

JOHN H. ANDREAS, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. Where do you live?
A. 2718 North 11th Street.
Q. What is your business?
A. Clothing business.
Q. Clothing?
A. Yes.
Q. Whereabouts?
A. 2721-2723 Germantown Avenue.
Q. Do you know Mr. Werner?
A. I do.
Q. How long have you known him?
A. Since I am in Philadelphia. About 30 years.
Q. Do you know other people who know him?
A. Yes, I do.
Q. Among those who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. Excellent.
Q. Do you know Mr. Darkow?
A. Only by sight.
Q. Do you know Mr. Lemke?
A. I do.
Q. How long have you known Mr. Lemke?
A. Approximately, about 15 or 16 years.
Q. Do you know others who know him?
A. I do.
Q. What is his reputation as a law-abiding citizen? Good or bad?
A. Very good. Good.
Q. Do you know Mr. Vogel?
A. Only by sight.
Q. Do you know Mr. Schaefer?
A. Also only by sight.

(No cross-examination.)

ADOLPH BODE, having been duly sworn, was examined and testified as follows?

By Mr. Gray:

Q. Where do you live?
A. Where do I live now?
Q. Yes.
A. 1845 Wiley Street.
Q. What is your business?
A. I used to be a plumber.
Q. You are not in any business now?
A. No.

Q. Do you know Mr. Werner?
A. Yes, sir.
Q. For how long?
A. About 35 years, I think.
Q. 35 years?
A. Yes, sir.
Q. Do you know other people who know him? Do you k
friends?
A. I am related to him. His wife is a neice of mine.
Q. His wife is a neice of yours?
A. Yes, sir.
Q. Do you know his friends? Do you know other peo
know him? Do you know others that know Mr. Werner?
A. Yes, sir.
Q. Among those that know him, what is his reputation as
abiding citizen? Good or bad?
A. Good.
Q. Do you know Mr. Darkow?
A. No.
Q. Do you know Mr. Lemke?
A. No.
482 Q. Or Mr. Vogel or Mr. Schaefer?
A. No, not personally.

(No cross examination.)

CHARLES SAAKE, having been duly sworn, was examined an
fied as follows:

By Mr. Gray:

Q. Where do you live?
A. 467 North 8th Street.
Q. Are you engaged in business?
A. Yes, I am in the costume business.
Q. You have been in business for how long?
A. Oh, about 45 years.
Q. How long have you been up on 8th Street?
A. About 43 years.
Q. You are in the same place now?
A. The same place.
Q. Do you know Mr. Werner?
A. Yes, sir.
Q. How long have you known him?
A. About 15 years.
Q. Do you know other people that know him?
A. Yes, sir.
Q. Among those who know him, what is his reputation as a
abiding citizen? Good or bad?
A. Good.
Q. Good?
483 A. Yes, sir.

Q. Do you know Mr. Darkow?
A. Yes, sir.
Q. How long have you known him?
A. About the same time.
Q. The same?
A. Yes.
Q. And do you know others that know him? Do you know other people that know him?
A. Some actors.
Q. I heard you say "some actors." Then what else did you say?
A. They think they know him but I don't know where they are now.
Q. They think they know him, and you don't know where they are now?
A. No.
Q. Among those that know him, or among those that you know that know him, what is his reputation as a law-abiding citizen? Good or bad?
A. A very good one.
Q. Do you know Mr. Lemke?
A. Yes, sir.
Q. How long have you known him?
A. About fifteen years, too.
Q. Do you know other people who know him?
A. Well, in societies.
Q. You know others in societies that know him?
A. Yes, sir.
Q. Among those that know him, what is his reputation as a law-abiding citizen? Good or bad?
A. A very good one.
Q. Do you know Mr. Vogel?
A. No.
Q. Do you know Mr. Schaefer?
A. No.

Cross-examined.

By Mr. Roberts:

Q. Did you read the Tageblatt?
A. I do.
Q. Do you own any stock in it?
A. No. I am in the costume business. I don't need any other stock.

CARL REINICH, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. Where do you live?
A. 1244 North 29th Street.

Q. What is your business?
A. Cabinet maker.
Q. What business?
A. Cabinet maker.
Q. Do you know Mr. Werner?
A. Yes.
Q. How long have you known him?
485 A. Oh, since about 30 years.
Q. Do you know other people that know him?
A. Yes.
Q. What is his reputation as a law-abiding citizen? G
bad?
A. Very good, as much as I know.
Q. Do you know Dr. Darkow?
A. No, sir.
Q. Do you know Mr. Herman Lemke?
A. Yes.
Q. How long have you known him?
A. Oh, for about twenty years.
Q. Do you know other people that know him?
A. Yes, a good many.
Q. Among those who know him, what is his reputation as
abiding citizen? Good or bad?
A. The same as Mr. Werner's. Very good.
Q. Do you know Mr. Vogel?
A. No, sir.
Q. Do you know Mr. Schaefer?
A. No, sir.

(No cross examination.)

CARL CLEMENS, having been duly sworn, was examined and
fied as follows:

By Mr. Gray:

Q. Where do you live?
A. 913 West Lehigh Avenue.
486 Q. What is your business?
A. Teacher of music.
Q. Do you know Mr. Werner?
A. Well, I know Mr. Werner, but I have spoken to Mr. W
about twice, I believe.
Q. You only know him slightly?
A. Slightly.
Q. Do you know Mr. Darkow?
A. I know who Mr. Darkow is, but I have not spoken to
Darkow yet.
Q. You know who Darkow is. Do you know other people
know him?
A. Yes.

Q. What is his reputation among those who know him as a law-abiding citizen? Good or bad?
A. As much as I know, good reputation.
Q. As much as you know, it is good?
A. Yes.
Q. Do you know Mr. Lemke?
A. Yes.
Q. How long have you known him?
A. Over twenty years.
Q. Do you know other people who know him?
A. Yes.
Q. Among those who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. Very good reputation.
Q. Do you know Mr. Vogel?
A. Well, Mr. Vogel, I know him when I see him, but I have not any contact with him.
Q. Do you know Mr. Schaefer?
A. I know Mr. Schaefer.

(No cross examination.)

WILLIAM REGENSBERGER, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. Where do you live?
A. 134 North 5th Street.
Q. What is your business?
A. I am not in business now.
Q. What was your business before you retired?
A. Publisher.
Q. Publisher?
A. Yes.
Q. Of books or newspapers or what?
A. Newspaper.
Q. What paper?
A. The Sunday Journal, the Philadelphia Sunday Journal, German.
Q. The Philadelphia Sunday Journal?
A. Yes.
Q. A German paper?
A. Yes.
Q. Do you know Mr. Werner?
A. Yes.
Q. How long have you known him?
A. Oh, about thirty years.
Q. Do you know other people who know him?
A. Oh, yes, plenty.
Q. What is his reputation as a law-abiding citizen? Good or bad?

A. Very good.
Q. Do you know Mr. Darkow?
A. Yes.
Q. How long have you known him?
A. About twenty years.
Q. Do you know other people who know him?
A. Yes.
Q. Among those who know him, what is his reputation as a la
abiding citizen. Good or bad?
A. Very good.
Q. Do you know Mr. Lemke?
A. Yes.
Q. How long have you known Mr. Lemke?
A. About 15 years.
Q. Do you know other people who know him?
A. Yes.
Q. Among those who know, him, what is his reputation as a la
abiding citizen? Good or bad?
A. Very good, too.
Q. Do you know Mr. Vogel?
A. Yes.
Q. How long have you known Mr. Vogel?
A. Oh, 12 or 15 years.
489 Q. Do you know other people that know him?
A. Yes.
Q. Among those that know him, what is his reputation as a la
abiding citizen? Good or bad?
A. Very good, too.
Q. Do you know Mr. Schaefer?
A. Yes, sir.
Q. How long have you known him?
A. 15 years.
Q. About 15 years?
A. Yes.
Q. Do you know other people who know him?
A. Yes, sir.
Q. Among those who know him, what is his reputation as a law-
abiding citizen? Good or bad.
A. Very good, too.
Q. Very good, you say?
A. Yes.

(No cross examination.)

ANDREW WILLIARD, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. Where do you live?
A. 2523 North 8th Street.

Q. What is your business?
A. Bookbinder.
490 Q. Have you any business with the Tageblatt?
A. We have bound books for them.
Q. You have bound books for them?
A. Yes.
Q. Was it an extensive business you have had for them, or just small?
A. Well, their files. That is all.
Q. Their files?
A. Yes.
Q. Do you know Mr. Werner?
A. No, sir.
Q. You don't know Mr. Werner?
A. No, I do not.
Q. Do you know Mr. Darkow?
A. No.
Q. Do you know Mr. Lemke?
A. He is the one.
Q. How long have you known him?
A. About twenty years.
Q. Do you know others who know him?
A. Yes.
Q. Among those who know him, what is his reputation as a law-abiding citizen? Good or bad.
A. Very good.
Q. You don't know Mr. Vogel or Mr. Schaefer?
A. No I do not.

(No cross examination.)

491 LEONARD A. LETTINGER, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. Where do you live?
A. Penfield, Delaware County.
Q. What is your business?
A. I am a public school teacher in the Philadelphia public schools, teaching in the Philadelphia Trade School.
Q. You teach in the Philadelphia Trade School?
A. Yes.
Q. Do you know Mr. Werner?
A. No.
Q. Do you know Mr. Darkow?
A. I do.
Q. How long have you known Dr. Darkow?
A. 11 years.
Q. Do you know others who know him?
A. Yes.

Q. Among those who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. Very very good.
Q. Very very good?
A. Yes.
Q. Do you know any of the other defendants?
A. No.

(No cross examination.)

492 WILLIAM R. THOMPSON, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. Where do you live?
A. 2211 North 13th Street.
Q. What is your business?
A. I am a Clerk in the office of the Prothonotary of the Court of Common Pleas.
Q. In City Hall, Philadelphia?
A. City Hall.
Q. I think the only one of the defendants you know is Dr. Darkow?
A. That is all.
Q. How long have you known him?
A. 25 years, about.
Q. Do you know others who know him?
A. Oh, yes.
Q. Among those who know him what is his reputation as a law-abiding citizen? Good or bad?
A. Excellent.
Q. You don't know any of the other defendants?
A. None at all.

(No cross examination.)

Dr. SAMUEL R. SAWYER, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. Where do you reside?
A. 3118 Market Street.
493 Q. Are you a dentist or a physician?
A. I am a graduate in dentistry, and a student in medicine.
Q. You are a graduate in dentistry and a student in medicine?
A. Yes, sir.
Q. Do you know any of these defendants?
A. Dr. Darkow.
Q. You don't know any of the others?
A. No.

Q. How long have you known Dr. Darkow?
A. For about three years.
Q. Do you know others who know him?
A. Yes.
Q. Among those who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. Excellent. Good.

(No cross-examination.)

ALFRED E. HEYWARD, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. Where do you live?
A. 659 East Penn Street, Germantown.
Q. What is your business?
A. Cartoonist, and painter. Both.
Q. Do you know any of these defendants?
A. Mr. Darkow.
Q. None of the others?
A. None of the others.
494 Q. How long have you known Mr. Darkow?
A. 1908. Ten years.
Q. Do you know others who know him?
A. Yes.
Q. Among those who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. Very good.

(No cross-examination.)

HUGO ROSSMAN, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. Where do you live?
A. 719 W. Schiller Street.
Q. Philadelphia?
A. Philadelphia.
Q. What do you do for a living? What is your business?
A. At the present time, nothing.
Q. What was your business?
A. Baker.
Q. Baker?
A. Yes. I used to represent the Union.
Q. Do you know Mr. Werner?
A. I know Mr. Werner, yes.
Q. For how long?
A. At least about 18 years.

Q. Do you know others who know him?
A. Oh, yes, lots of them.
495 Q. What is his reputation among those who know him Good or bad?
A. Very good.
Q. Do you know Dr. Darkow?
A. Well, I don't know Dr. Darkow. Just a short while.
Q. Do you know Mr. Lemke?
A. I know Mr. Lemke, yes.
Q. How long have you known Mr. Lemke?
A. Well, about 15 years.
Q. Do you know others who know him?
A. Yes, sir.
Q. Among those who know him, what is his reputation as a law abiding citizen? Good or bad?
A. Very good.
Q. Very good?
A. Yes.
Q. Do you know Mr. Vogel?
A. Yes.
Q. How long have you known Mr. Vogel?
A. At least about 20 years.
Q. Do you know others who know him?
A. Yes, sure.
Q. Among those who know him, what is his reputation as a law abiding citizen? Good or bad?
A. Always good.
Q. Do you know Mr. Schaefer?
A. Yes.
496 Q. How long have you known him?
A. The same period.
Q. Do you know others that know him?
A. Yes.
Q. Among those who know him, what is his reputation as a law abiding citizen?
A. Very good, law-abiding. Very good and law-abiding.
Q. Very good and law-abiding?
A. Yes.

(No cross-examination.)

JACOB STURM, JR., having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. What is your business?
A. House furnishing store.
Q. Where is your place of business?
A. 30th and Huntingdon Streets.
Q. 30th and Huntingdon?
A. Yes.

Q. How long have you been in that business?
A. About 34 years.
Q. Do you know Mr. Werner?
A. Yes, sir.
Q. Do you know other people who know him?
A. Yes, sir.
Q. Among those who know him, what is his reputation as
497 a law-abiding citizen? Good or bad?
A. Excellent.
Q. Do you know Mr. Darkow?
A. Yes, sir.
Q. Do you know other people who know him?
A. Yes, sir.
Q. How long have you known him?
A. About five years.
Q. Among the people who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. Very good.
Q. Do you know Mr. Lemke?
A. Yes, sir.
Q. For how long?
A. About twenty years.
Q. Do you know other people who know him?
A. Yes, sir.
Q. Among those who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. Very good.
Q. Do you know Mr. Vogel?
A. Yes, sir.
Q. How long have you known him?
A. About 15 or 20 years.
Q. Do you know other people who know him?
A. Yes, sir.
Q. Among those who know him, what is his reputation as
498 a law-abiding citizen? Good or bad?
A. Very good.
Q. Do you know Mr. Lemke?
A. Yes.
Q. For how long?
A. About 15 or 20 years.
Q. Do you know other people who know him?
A. Yes, sir.
Q. Among those who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. Very good.

Cross-examined.

By Mr. Roberts:

Q. Are you connected with the Tageblatt?
A. No, sir.

Q. Have you any stock?
A. Yes.
Q. Do you read the paper?
A. Yes, sir.

Redirect examination.

By Mr. Gray:

Q. How much stock do you have in the Tageblatt?
A. $10.

AUGUST F. HERBERT, heretofore sworn, recalled.

By Mr. Gray:

Q. You have been sworn in this case?
499 Q. You know you were a witness for the Government?
A. Yes, sir.
Q. You know Mr. Werner?
A. Yes, sir.
Q. Of course, as you have testified, you were one of the editors connected with the Tageblatt. You know other people who know Mr. Werner?
A. Yes, sir.
Q. For how long have you known him?
A. About 12 years.
Q. What is his reputation generally among those who know him as a law-abiding citizen? Good or bad?
A. Excellent.
Q. How about Dr. Darkow? How long have you known him?
A. Dr. Darkow, I have known him about 14 years.
Q. Do you know other people who know him?
A. Yes, sir.
Q. What is his reputation as a law-abiding citizen?
A. Very fine.
Q. Do you know Mr. Herman Lemke?
A. Yes, sir.
Q. For how long?
A. Since I am with the Tageblatt, about 11 years.
Q. About 11 years?
A. Yes.
Q. Do you know other people who know him?
A. Yes, sir.
500 Q. Among those who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. Good.
Q. Do you know Mr. Vogel?
A. Yes, sir. I know those gentlemen by sight.
Q. Do you know Mr. Schaefer?
A. Yes, sir.
Q. Only by sight, the two of them?

A. Yes, sir.
Q. Then, I will not ask you about them.

(No cross examination.)

Dr. MARTIN DARKOW, having been duly sworn, was examined and stified as follows:

By Mr. Gray:

Q. What is your full name?
A. Martin Darkow.
Q. You try to keep your voice up, and outside of listening to me, ou need not pay any attention to me. Try to keep your voice di-cted toward the jury. Where do you live?
A. 6145 Jefferson Street.
Q. Where were you born?
A. In Riga.
Q. Of course, the jury may be, all of them, fairly familiar with here Riga is, but won't you tell us, in case they are not?
A. It is in Russia.
Q. It is in Russia?
A. Yes, sir.
Q. It is in the western part of Russia, near the German order, is it not?
A. Yes, in the Baltic Provinces.
Q. When were you born?
A. In 1858, May 6th.
Q. You are, therefore, 60 years old?
A. Yes, about.
Q. In your 61st year?
A. Yes.
Q. How long did you remain in Riga?
A. A few months. I don't know just how long.
Q. Of course, your testimony as to your very earliest days is ourely by hearsay?
A. Yes, my mother.
Q. But it is perfectly admissible. Where did you go from Riga?
A. To Lemburg.
Q. That is in Austria?
A. That is in Galicia, Polish Austria.
Q. It is in Polish Austria?
A. Yes.
Q. It is in the northeastern corner of Austria, is it not?
A. Yes, sir.
Q. How long did you remain there at Lemburg?
A. Until I was about the age of 19 years.
Q. So that you were brought up really in Lemburg?
A. I was brought up in Lemburg?
Q. And your family lived there?
A. My family lived there. My father was a doctor there.

Q. And you mean by doctor, a doctor of medicine, a physician?
A. A doctor of medicine, yes, sir.
Q. And after you became about, I think you said 19, I am n
sure, where did you go from Lemburg?
A. I have to say a little more. I studied in Lemburg, in t
Polish High School, and then had one year at the Polish Universit
and then I left for Vienna to continue my studies at the Universit
Q. You went to the University at Vienna?
A. Four years.
Q. And you graduated from there?
A. I graduated from there.
Q. With what degree?
A. With the degree of doctor of philosophy.
Q. You were then about what age?
A. About 23.
Q. About 23?
A. Yes, sir.
Q. Where did you go to from Vienna?
A. I did not leave Vienna. I stayed in Vienna, only I left whe
I traveled for a few weeks, or a few days.
Q. How long did you remain in Vienna?
A. Until 1891.
Q. Until 1891?
A. Yes, sir.
503 Q. You were then a matter of 33 years of age?
A. About.
Q. And from Vienna, then, where did you go?
A. From Vienna I went for a month to Italy, for six weeks t
France, then for several weeks, I don't know how many, to England
and then I went to the United States from Liverpool.
Q. What did you do during the ten years you spent in Vienna
after you graduated?
A. After I graduated I really lived on the income of my money
Q. Left you by your family?
A. By my father, yes, sir, and then when I lost my money, I had
to start to work, real serious work, and I had to decide where to start
up, as I did not like very much the Austria regime, I tried in Italy,
France, England, where I would like it best, but I found that the
best for me would be the United States, and so I came to the United
States. I wanted to do something. My father was a great admirer
of Lincoln, and when we were children, he spoke always of the
United States and the great war, and we had not any greater man
in Europe than Lincoln. I may say also that he thought lots of
Bismarck, but he always told me, if he only could live in the New
World, he would leave the Old World.
Q. Anyhow, you came here in 1891, as a result of what you heard?
A. Yes.
Q. Did you ever live in Germany?
A. In Germany I only was all together two days in Berlin and
three days in Dresden.
Q. I am talking about making it your home?

A. No, never.
Q. Have you become a naturalized citizen?
A. No, I only got my first papers.
Q. When did you apply for them first? What year did you apply for your first papers?
A. About two and a half years when I got here.
Q. When you were here about two and a half years?
A. Yes.
Q. Why didn't you get your final papers?
A. I want to explain that, in candor and truth.
Q. Look over to the jury and talk out loud.
A. When I got the first papers I asked someone to give me advice how to get them. I was new here. It was a law student He told me, "What was your father?" I said, "My father was born in Germany. As much as I know, I am a German citizen." "Where were you born?" "I was born in Russia." "Where did you live?" "In Austria." I said, "The best thing to do would be to forswear the German Emperior." So I did. I did not owe him any allegiance any more. I foreswore him. So I did. Afterwards I asked other people. They said I am perfectly wrong, that I cannot be a German citizen at all, and I could not forswear the Emperor. They told me I was wrong, that it was perfectly wrong, the affidavit that I signed, the first paper, that I foreswore the German Emperor, that I don't owe him any allegiance any how. I owe allegiance to Austria, and that was the trouble. I did not know what to do. I was a little frightened of having done a wrong thing, unwittingly, and I left it stand until about 18 years afterwards, and then somebody told me, "You might apply just now," that it was the proper thing for me now to apply. I felt always I am wrong. I could not do anything. I wanted to be a citizen. I was afraid to apply for it. They told me "There is a statute of limitations," even if it was wrong, there is no danger for you any more, and so I applied, I do not remember the year, but I have the documents at home.
Q. Give us your nearest recollection when you applied again?
A. About 1912, I think, and then about a year and a half I got notice that I could appear before the court, and once I could not appear, I was sick, and the second time I was frightened again, and I thought it might be dangerous for me to appear again on account of this thing.
Q. That was after the war had been declared on the other side? That was after the war had been declared?
A. No, that was 1913 or 1914.
Q. 1913 or 1914. Before the war?
A. Yes, before the war.
Q. I want to get that clear?
A. It had nothing to do with the war whatsoever.
Q. You never took out your final papers?
A. No, I did not.
Q. That remains the fact?
A. That is the fact, yes.

Q. Are you married?
A. I am married.
Q. When were you married?
506 A. 1889.
Q. Where?
A. In Vienna.
Q. Your wife came here with you to this country?
A. No, she came to this country after a short while.
Q. Have you any children?
A. Three children.
Q. Born where? In this country, or abroad?
A. In this country.
Q. All of them?
A. One of them was brought a baby here with my wife.
Q. Are they all girls, or girls and boys?
A. Girls. Three girls.
Q. What are their ages now?
A. About 28, 25 and 19.
Q. What does your oldest girl do?
A. My oldest girl studied here in the public school, the I School, then went to Bryn Mawr, and she got lots of scholars and studied there for seven years until she got a degree of doct philosophy for Greek and sandscrit.
Q. From Bryn Mawr?
A. Yes.
Q. And what does she do now?
A. She is now in New York. She had for several years a tion in Bryn Mawr, but now she changed and went to New York. wanted to live in New York and she has a very good position.
Q. What did you say her position was at Bryn Mawr?
507 A. A teaching position.
Q. At Bryn Mawr College?
A. No, not in the college. In the Preparatory School, the sc that prepares them for Bryn Mawr.
Q. What is she doing in New York?
A. In New York she is with an Insurance Company.
Q. An Insurance Company?
A. Yes. I think she is what you call an assistant underwriter something like that.
Q. Something like that?
A. Yes. I don't understand the insurance business.
Q. What does your other girl do?
A. The second girl passed through the High School.
Q. In Philadelphia here?
A. In Philadelphia, and then went to Bryn Mawr, too. Th she graduated there. She had lots of fellowships and scholarshi She is the highest Pennsylvania girl in Bryn Mawr. She was at t top of her class in Bryn Mawr. She is the highest Pennsylvania g in Bryn Mawr for twenty-five years. She is the only girl at Br Mawr that had the Summa Cum Laude for her degree. Then s studied at Johns Hopkins, and one year out in Indianapolis, in

eparatory school, she taught mathematics and physics, and last ar she was in Lowell, Massachusetts.
Q. Teaching?
A. Teaching mathematics and physics, and now she has accepted a position as—I do not know how to call it—assistant
8 astronomer in the observatory at the University of Virginia.
Q. Assistant astronomer at the observatory at the Univers- of Virginia?
A. Yes, the University of Virginia.
Q. What does the other girl do?
A. The other girl, the youngest, passed through the High School, nd is at the University of Pennsylvania. She is now a sophomore.
Q. She is a sophomore at the University of Pennsylvania?
A. Yes, sir.
Q. You only have three children?
A. I only have three children.
Q. I understood you—you will correct me if I am wrong—I did ot want to creat- any impression that is not correct—I understood hat one of your girls was employed by the Government at the pres- nt time?
A. Well, she studies at the University of Pennsylvania in the vening, but the course just started, you understand. It did not art yet. Then in the day time she is occupied with a Government osition.
Q. Where does she work?
A. She works in the sugar department.
Q. You mean by that the Food Administration Department?
A. Yes, sir.
Q. In Philadelphia?
A. In Philadelphia, yes, sir.
081½ Q. When you came to Philadelphia what did you do for a living after you came here?
A. When I came to Philadelphia, of course I had lost my money, nd I had to be careful, and start to work, at serious work, and I de- ided to take any work I could get. At first I did not get any work. omebody advised me to try a trade.
Q. Do not bother about the details.
A. I started in the music business, teaching music lessons.
Q. Teaching music?
A. Yes.
509 Q. Then you were teaching music continuously?
A. With the exception of the interruption of one year when I had nervous prostration and I couldn't listen to music.
Q. And what did you do beside that?
A. Well, that was in the winter time and I didn't have any lessons in the summer time at all, and I had to have something to do during June, July and August, and I didn't know that the music lessons topped entirely and then I found myself without a livelihood and I hought I would have to take up something else to be sure of a liveli- hood in the summer time, and about that time there was an adver-

tisement in the Demokrat, not the present Demokrat, but a mo conservative paper, not the present Demokrat Gazette publication.

Q. In other words there was a German paper called the Germ Demokrat, but not the one now published?

A. No.

Q. And it is not the same paper which is now the Philadelph Demokrat published in conjunction with the Philadelphia Gazett

A. No, sir.

Q. Did you go to work for them?

A. Yes, sir.

Q. In what capacity?

A. I worked with them for 16 years until the paper busted and had to get out.

Q. What did you do there?

510 A. My principal duties there were musical editor and fina cial editor, the two branches which I understand, and besid that I had to translate.

Q. During that time did you do other things besides teach mu outside of your newspaper work?

A. Yes, lots of other things which I did in my spare time and my off days. I translated lots of books and pamphlets and all kin of letters and all things like that. I had quite a lot of work to in translation.

Q. In other words in addition to the newspaper work you carri on this music business and translation?

A. Yes, and I translated many large books, medical books a philosophical books, from English into German and from Germa into English and some Italian into English, because I know sever languages.

Q. How many do you know?

A. I know several.

Q. Well, how many? Several really don't mean anything.

A. Well, more or less, I know several. You know it is a differen in knowing them and having a knowledge of them. I think I ha a good knowledge of English and a very good knowledge of Germa and a very good knowledge of French and a pretty good knowled of Italian and a very good knowledge of Spanish and a very goo knowledge of Polish, and I know some Latin and a little Greek to

Q. About what year was it when the Demokrat busted, as yo say, and you were out of a job?

511 A. Let me be correct in that. My memory isn't very fres

Q. Correct anything that you want to correct and tell th jury about it. The jury want to know anything as to who you ar and what you are so that they can judge of you here.

A. I think that was about 10 years ago.

Q. What did you do after that?

A. Looked for something, and I knew an editor that was with the Gazette, it wasn't the Gazette then but what is now the Gazette, and I got a position there.

Q. How long did you work with that paper?

A. I worked four years there.

. Now, that is the paper known as the Philadelphia Demokrat has been here referred to?
. Yes, sir.
. And when did you stop working for them?
. Well, that was about 6 years ago.
. What did you do after that?
. I went to the Tageblatt and they had a position open there and of the editors of the Gazette was at the Tageblatt and he told me ome over to the Tageblatt and I could work there, and I went and saw Mr. Werner about a position.
. About when was that?
. That was about 6 years ago.
. What was your position then and what has it been since with the Tageblatt?

A. Well, I want to mention that at the Gazette I had about the same position as I had with the old Demokrat. I was the ncial editor and I wrote every evening the financial news and the k exchange letter once a week, and then I was also required to nd the operas and also the concerts and write about them, and des that I translate, and when I went to the Tageblatt I couldn't l the same fields of endeavor, the same work to do, because they l no financial news and the musical news Mr. Werner himself te the opera and I couldn't write about the opera and so there was y left the concerts and of course that couldn't fill the bill and so ad to make other news, city news, and I was sent to meetings and y were in English and nobody else could go and I would get the eches and write them up and report them, translate them into rman and Mr. Werner had all the foreign news in the beginning l I didn't make any. Mr. Werner made all the foreign news in beginning.

Q. Now, speak out so that if some one were standing back there the door they could hear you. You said, and if I am incorrect, rect me, because I don't want to put anything in your mouth, a said that there was not enough in the music to keep you busy, you took up the local news and other matters?

A. Other matters.

Q. And that at first Mr. Werner had entire charge of the foreign ws?

A. Entire charge.

Q. Now then, go ahead.

3 A. That lasted until the war broke out. When the war broke out Mr. Werner said to me, "You have to do the work th me. The war work will be very important and we will have to vide it up. You do half of it and I will do half of it. You know ore about the Eastern side and you write the Eastern matters and e Western battles I will write."

Q. Now, so as to get this straight, when you say the war broke out, you refer to the origin of the big war in 1914 or do you refer to e time when America and Germany got into the war?

A. No, it was the origin of the war in 1914, first when the war oke out, and so I had the war news besides my other work which

I did over the city and sometimes from Washington and New York and sometimes Congress I had to do besides, and all this war work and the dispatches and made titles and translate them and that continued until Mr. Werner broke down.

Q. Now, tell me this. You hadn't during the period of time in 1917, in the summer, any war service news?

A. No.

Q. No matter what you had before that, during that period of time practically all your foreign news was written from other newspapers either English or German, were they not?

A. Without exception.

Q. During that time where did you get your editorials from? Did Werner write them or did somebody else write them or were they sent in?

514 A. Werner usually wrote the editorials, but sometimes he clipped them and sometimes sent them in clipped. I just wanted to say in relation to the breakdown of Mr. Werner——

Q. Tell us about that.

A. About two years ago he came to the office and he said, "I am perfectly broken down and I can't work, what will we do?" And I said, "You can't work anything at all?" And he said, "No, I cannot. I have to stay home," and he was perfectly broken down, and he said, "You will have to make the whole foreign news and if I feel like it I will send in an editorial and if I don't feel like it, I will send in a clipping." And then I took it over and made the foreign news in addition to the work that I had to do and I must acknowledge that it was too much, and if you will allow me to give you a sketch of the work, you will have an idea of how difficult and bulky it is, more bulky than difficult. I came usually to the office about half past 5 or 6 and then I had to take all these clippings from the German and American papers, the Philadelphia Demokrat and the Statts Zeitung and the Philadelphia English papers. There were only two German papers mentioned here but we had several. They only mentioned the Statts Zeitung and the Philadelphia Demokrat, but we had several morning and evening papers. We had the Journals, which were German, and then we had the Volks Zeitung, a New York paper and then we had here the evening papers and some morning papers, the Ledger, which had lots of news that we didn't have, and we would take these clippings from the

515 English papers and translate them into the German and change them. With very few exceptions we had to change them and the reason of changing them was that some of our subscribers read these newspapers and if they got our paper and saw the same item in our paper that they had read in the other paper, then they would say it was no use to take our paper, and so it was a rule that we had to change it, and sometimes we left out the first sentence and sometimes we left out something in the middle and sometimes in the end, and we made a little different heading and made it look like new, but, of course, it wasn't new, because we had no service, and it would be stale news and we had to make it look like new news, and then in the evening we had the morning papers which

ld come out, the Philadelphia papers would then come out some-
es at 10 o'clock and sometimes at 11 o'clock or it might be half
t 12, and then you had to run as much as you could to get the
st editions.
Q. You mean 10 and 11 o'clock at night?
A. Yes.
Q. The morning papers were on the street the night before?
A. Yes, sometimes.
Q. And sometimes when you got them as late as half past 12 you
l to do some tall hustling to get them translated and in your
per?
A. Yes, I think so, when there was some important news that you
l to get in, had to translate it and get it in the paper, and I
want to say that I was making about forty to fifty clippings
every night and making new heads and besides that I trans-
lated about 8 to 11 columns of new stuff, so the work wouldn't
very thorough, you might imagine. It was as well done as could
in this time but it couldn't be very thorough or very carefully
ne.
Q. During the last summer were you away on a vacation at any
ne?
A. You mean in 1917?
Q. Yes, in the summer of 1917, from June until September?
A. Yes, I was away one week. Not two weeks.
Q. Do you know just when it was?
A. I know exactly.
Q. Just tell us when that was.
A. I was in Ocean City from the 30th of July to the 5th or 6th of
ugust. I was away one week, whatever that was.
Q. From the 30th of July to the 5th or 6th of August?
A. Yes, it was the 5th of August, 7 days.
Q. And did you have any days off particularly?
A. Yes, my day off was Saturday.
Q. Any other day?
A. Well, no, but if I happened to be sick on another day, then I
ould take that day off and work that Saturday instead.
Q. When you went to the Tageblatt what salary did you get at
rst?
A. At first $18.00 a week.
Q. What were you getting last September?
17 A. $22.00 a week.
Q. Did you ever get more than $22.00?
A. Never.
Q. Are you with them yet?
A. No.
Q. You are not with the Tageblatt now?
A. No, I am not with the Tageblatt for six months.
Q. What are you doing now?
A. I am sorry to say that I cannot find work on account of these
ndictments. I even lost all my lessons from that. The greatest
art was on account of the publicity that was given to the case.

Q. Now, I think I have questioned you about everything genera in connection with you and your connection with the paper. there anything else that you want to say on your own behalf bef I ask you about some of these newspaper articles? I believe I h covered everything that might be asked you at the present time.

A. I think you have.

Q. I show you Government's Exhibit No. 1, which is the Phi delphia Sonntagsblatt for Sunday, June 24, 1917, and calling y attention to what is apparently a news article appearing on the th column of the first page, headed, "The Crisis," I ask you do y know who had that inserted in that paper? That is a lift from other paper, isn't it? I asked you two questions and you can ans either one first.

518 A. I will answer both questions.

Q. When you answer them don't speak to me but speak loud.

A. I cannot say whether this is a clipping or a translati

Q. That is you can't say whether it is a clipping from a Germ paper or a translation from an English paper?

A. No.

Q. Can you tell me this, whether you were the one who responsible for having it inserted in that paper?

A. I say no, because that paper is a Sunday issue.

Q. And you didn't arrange the news service for Sunday?

A. No, sir.

Q. I show you government's exhibit No. 5, which is the Philad phia Tageblatt for Tuesday, July 10, 1917, and calling your attenti to an article appearing on page 3, column 3, which is one of a numb of dispatches under one head, but which is selected individually the subject of one count in this indictment, and ask you the sa questions with regard to that, the article being marked, "Confirmed Whether you know whether it is a clipping or taken from an Engli paper and translated or whether you are responsible for its inserti in this paper or not?

A. I want to say something about that. It is almost impossib for me now after that lapse of time to say in every case whether was a clipping from a German paper or a translation from an Engli paper. It is impossible to remember that when you make so ma for a year.

519 Q. I think we all appreciate that and I am putting t questions to you so that in every instance you can say whethe it is or is not a certain thing, so that we can have your knowledg of it, and if you don't know, just say so, because we understand it difficult for you to be able to recall them clearly after a year's tim Do you know about that article that I have just shown you

A. I don't know whether it is a clipping or a translation.

Q. Now do you know, and what I have said to you applies to thi question also, do you know whether you were the one that was respon sible for that article's insertion in the paper or whether it was one o the other editors?

A. I usually made the foreign news, and sometimes I had to give some clippings or translations to some of the other people, and when I give a clipping to another of our editors, he had to fix it and get it off, make the headlines, or whatever he deemed necessary, shorten it up and make the title and let it go out, and I never looked at it any more.

Q. Do you know whether you were responsible for this article or not?

A. I can't say. I wish I could say.

Q. Now, with reference to the article I have just spoken about, headed "Confirmed", I show you Government's Exhibit No. 9" and ask you whether or not the heading which is written in pen over the top of the clipping is in your handwriting?

A. That is my handwriting.

520 Q. And I ask you whether or not you recall whether you drew a pen and ink mark through these lines appearing in paragraph 6, numbered with the No. 3?

A. Well now, I am under oath and I can't swear that I did that, but it is very likely that I did, because I made the item, so that I probably did that.

Q. In other words your handwritting in the headline makes you think that you were responsible for whatever instructions appear above the clipping?

A. Will you let me say something, that it is a fair possibility that somebody else made it. I can't say for sure, because I can't recognize that line as my line the way I recognize the writing.

Q. But you think in all probability you did it because your writing appears at the head?

A. Yes, sir.

Q. What do you know, if anything, about this word written in type up here?

A. That has no connection whatever with the item. That is a piece of paper that I picked up and pasted this clipping on.

Q. What is that word there, what does it mean?

A. To ride.

Q. In other words you pasted a clipping on a piece of paper that had this word in type at the top of it and it has no connection whatever with the article?

A. Yes, sir.

521 The Court: Is that the clipping which afterwards became "Ups and Downs"?

Mr. Gray: No, this is the "Confirmed" article.

By Mr. Gray:

Q. That also enabled you to say that the article "Confirmed" was something that was clipped from a German paper instead of an English paper, does it?

A. Sure. I see that now when I see the clipping.

Q. I show you Government's Exhibit No. 10, being the Philadel-

phia Tageblatt for Friday, July 20, 1917, and calling your attention to an article which appears on column 5 of page 1, headed "Ups and Downs," and ask you to say whether that was a clipping or a translation and what you know about how it got into the paper?

A. It looks to me as if it would be a composite item, meaning by that it was partly clipped and part translated, but of course I am not sure. It looks to me that way.

Q. But do you know whether or not you were the editor that was responsible for its insertion in this paper?

A. Just as I said before. In all probability, as I did most of the work, it is very likely that I did that, but it is a possibility that somebody else did it, some of the other editors. I am not able to say for sure because it is too far away.

Q. I show you Government's Exhibit No. 14, calling your attention to page 4, column 5, the exhibit being the Philadelphia Tage-
blatt for Wednesday, July 25, 1917, an article headed,
522 "What Washington Hopes," which appears as part of a longer article and ask you whether or not you know as to that article whether it was a clipping or a translation and what editor was responsible for its insertion in the paper?

A. It looks to me as if it was a translation from a late evening edition, but of course I cannot say that for sure.

Q. Do you know what editor was responsible for the insertion of it?

A. I will have to repeat the same as I did before.

Q. That is that you don't know?

A. I don't know.

Mr. Gray: I think the jury should know as we go along about these articles, that, for instance, the article headed as I have just stated is carried from the front page on to another page and contains several articles as sub-headings.

Mr. Roberts: You have said several times that the government has taken articles out of larger articles and I challenge you now to correct it by translation. Wherever any article has anything added to it where it could possibly mean anything in connection with the article that we took, we copy two or three articles in so that we would not be accused of sniping a paragraph. I say to you that what precedes and what follows that article has no relation whatever to the thing in that article, and I challenge you to contradict it by translation.

Mr. Gray: I am not going to translate it, and I am not
523 suggesting that. I haven't said that there was a small excerpt taken out of a larger article, but what I wanted the jury to understand, and I think they are entitled to understand it, that this article, as well as some other articles, and when I stated it I think I am entirely fair and that the jury will see that it is fair, that there are two columns of articles on the first page and that they contain, in this particular case, eight sub-articles, and what they are, I don't know.

Mr. Roberts: They are dispatches, all dated with the city and the date.

Mr. Gray: All right, then it is continued over to the next page, another column, and this is the ninth and last of this particular se of the dispatches and, so that the jury may understand it, it is ot an article all by itself with a heading, but it is a set of articles ith which, of course, we have not been furnished with a translation nd which I cannot translate, but it contains a heading and three ub-headings and all these articles underneath, each of them con- ining a little heading of its own, and that is the way this sub- eading, "What Washington Hopes" appears. What relation it has the others I don't know. I only want to bring out the fact that is an article that appears with a number of other articles.

By Mr. Gray:

Q. Now, in the same exhibit, there appears to be an article on page 5, column 4, which is headed, "Serbia," a news article
24 apparently, a dispatch from Washington, standing alone, and I will ask you whether you know whether this is a clipping r a translation from an English paper?

A. I cannot say.

Q. Do you know what editor was responsible, whether you or nother one, for this insertion in this paper?

A. I cannot say that. I will just have to repeat what I said be- ore, that in all likelihood I made it, but I cannot swear to it that did.

Q. I show you "Government's Exhibit No. 20," which is the Phil- delphia Tageblatt for Tuesday, August 14, 1917, and calling your ttention to page 5, column 3, I ask you with reference to an article eaded "An Interim," whether, if you know, it was clipped, and his is one article appearing among a number of others, but it is the irst one of the lot, whether that was clipped or translated from an English paper?

A. I am not sure, but I think it was translated, because Weigants s probably from an evening edition.

Q. What do you mean by "Weigants"?

A. He was a man who made reports to the American paper and hey usually appeared in the late evening edition, so I don't think hat would be in the German morning papers.

Q. You think then that it was translated?

A. I think so.

Q. Do you know what editor was responsible for the insertion of it in the paper?

525 A. No, because it would be quite possible that I would have written the article, but if I did translate it I wouldn't be sure because the translations look very much alike.

Q. You cannot say then whether you are responsible for that article or not?

A. I cannot say.

Q. I show you "Government's Exhibit No. 24," being the Phila- delphia Tageblatt for Thursday, August 16, 1917, and calling your attention to page 1, column 2, I show you a short dispatch pub-

lished under a general heading with a number of others, headed "Nothing Certain," and ask you if you know whether this is a translation or a clipping and who was responsible for its publication?

A. I cannot say whether it is a translation or a clipping.

Q. Can you say who was responsible for its insertion in the paper?

A. I have to give the same answer as I gave before.

Q. That is that you don't know?

A. I don't know.

526 Q. I show you Government's Exhibit No. 28, being the Philadelphia Tageblatt of August 22, 1917, and I call your attention to an article appearing on page 5, column 2, headed "The War of the Rich," which is a report of La Follette's speech in the Senate (handing to witness). Do you know whether that is a clipping or whether it is a translation?

A. A translation. I remember this clipping, and the clipping made by me.

Q. The article inserted then is practically by you?

A. Yes sir. I remember that. Shall I give the reasons why I wrote it?

Q. You can do so.

A. Of course, I saw that clipping pasted, at the first hearing here.

Q. You recall that, do you?

A. Yes, sir.

Q. Now I show you a clipping, which is marked Government's Exhibit No. 32 and ask you if that is a clipping from which written article was taken.

A. I think that is because it is a double column, and here it is a single space, there it is a narrow column, and here a broader space.

Q. Tell me first, so that we may have that clear; tell us

527 whether that article there is a clipping or whether it is not a clipping.

A. This article down to here, (indicating about one half) was written with the pen, if I recall it.

Q. Now, Doctor, having shown you Government's Exhibit 32, which is a clipping from which this article was taken, I will ask you in whose handwriting appear those words written in pen, over the top of the printing; do you know?

A. Yes sir, I know.

Q. Whose is it?

A. That is my handwriting; all three corrections; there are three corrections on there.

Q. All three corrections, where they appear, are in your handwriting?

A. Yes sir.

Q. Can you tell me what,—because this is torn, and cannot be made clear,—can you tell me about that word that was there at the top?

A. That was "arden." That was "milliarden," and I left the "mill" standing, and that was not crossed off, but the rest was.

Q. What did it mean before it was changed, and what does it mean after it was changed?

28 A. I would have to explain that.
Q. That is what I want.
A. Before that, that was "million dollars," and the word in German was "milliard," and that means in English "billions," and I changed it from millions into billions, because it was really billions.
Q. How do you know it meant that?
A. Because I read that in English, that it was billions, and not millions.
Q. In other words, you knew that the German article which you had clipped from another paper meant that?
A. I knew the translation.
Q. And you translated it right for your own paper?
A. Yes sir.
Q. And, therefore, made that correction?
A. I made that correction.
Q. What is the subject-matter? We have only got the expression about a million dollars. Read what immediately precedes, and what immediately follows, so we may understand.
A. This is a speech by Senator La Follette, where he said that on account of the War we will be put to the necessity of putting up millions of dollars, and, of course, he meant billions of dollars.
Q. And you knew that La Follette meant billions, as you have quoted it?
A. Yes sir.
529 Q. What does that word mean, the next correction?
A. That is "riots."
Q. What was scratched out, and what was put in?
A. I scratched out and crossed out the word "reihen," instead of the expression "riots."
Q. What you scratched out was "reihen"?
A. Yes, sir.
Q. Which was made a part of the word that begins there of "brot"?
A. Yes, sir.
Q. So that the original word was "brot reihen." Is that correct?
A. Yes, that is the word.
Q. And you took out the last two sylables, and put in the word "riot"? Is that right?
A. Yes sir.
Q. Making it "brot riot," instead of "brot reihen"?
A. Yes.
Q. Then that is what those words mean, that you have changed? What is the meaning after you have changed it? What is the effect upon the sense of the sentence?
A. The thing happened that way, because I remember that I had that piece of paper in my hands when the first hearing was had, and then it was fresh in my mind. I can remember now that
530 I did not remember it then, what "brot reihen" meant. It is not a German word. It is an American German word. It is not a word used in Germany. A literal translation would mean a bread row, like a baker would have in his bake shop, and that didn't

make sense, and I translated it into that. The translator didn understand the word. It came to us "bread rows," and I think t translator didn't understand. The word "rolls" and "rows" are bo spelled the same way. I changed that "reihen" to read "riots," make it right. That was wrong, you know. He didn't speak bread riots, but of bread lines.

Q. In other words, for "bread lines" you would have put in t German "brot reihen"?

A. The translator had it that way in the German paper, and looked it up in the dictionary, and no dictionary had the word in so I had to transcribe it, and explain it, so that it was not "riot but it is "bread lines."

Q. In other words, you knew that Mr. La Follette in speaking that, was referring to the lines of people waiting to get their brea

A. No, I did not know what he meant, but this was translat "bread riots," and, properly, it is "bread lines."

Q. You knew that Mr. La Follette was speaking of lines of peop waiting to get their bread, after you had made this article, and hea about the complaint that was made about that insertion,

531 the word "riots"?

A. Yes, for I looked for it at the time, but I did not kn what it was, and I was under the impression that it was speaking "bread riots."

Q. Well, now as to the words "brotreihen," just tell the jury wh is the literal translation of that word.

A. "Reihen" means a roll.

Q. So that the word thus used in the clipping meant "bre rolls"?

A. Yes sir.

Q. That is what it means?

A. Yes, it really means what the baker spreads out in the baker the bread.

Q. Speaking of rolls or rows of bread?

A. Yes sir.

Q. And that other word made no sense?

A. No, sir, for the translator made a mistranslation, and the expre sion "riots," in that, he meant "rows."

Q. I want you to read to the jury the sentence containing th word, before you changed it, and the sentence containing it aft it was changed.

A. If you will give me the clipping and translation I will read it

Q. Here is the translation (handing to witness.)

A. It reads as follows: "He declared that the proposed tw

532 billion dollar bill, as drawn up by the Senate committee on financial affairs is impractical because that covers less than seventeen per cent of the War expenses for the first year, and from this would result in the necessity of issuing bonds for billions of dollars, and bonds would mean the same as an increased cost of living, so that the consequences would be that the next winter bread riots could be expected in the big cities."

Q. So that if we take my friend's interpretation of the article as

ears in the clipping, it means "bread lines," so that the greatest
m you did was to change it to "bread riots" instead of "bread
s"? Is that right?
A. Yes, and then there is another correction.
Q. Tell us what the third correction is.
A. There was a change of the German word *to* "billions," into the
rman word "milliards." The Germans have a word, "billions,"
it does not mean thousand millions, but it means millions of
llions. So that there is absolutely a different meaning. So that
the German talks about those billions, it means much more than
English word, so that I had to change it and make it right.
Q. In other words, you made the same things there as you made
ove?
A. Yes, only the other way.
3 Q. Now, there is a line crossed out and a word changed.
Now, did that falsify the dispatch, the crossing of the line
t? Will you explain what that is, and what that line was there
first?
A. It read something like "the result is sure to come," something
e that, or "you cannot escape the consequences."
Q. Why did you cross that off?
A. I felt it was not necessary. I wanted to see about crossing it
t, because if you do not sometimes cross those things out the com-
sitor will think that you merely placed it on a sheet of paper. I
anted to show it was not proper.
Q. You wanted to show the compositor that you have something
do with that paper, and that you are not simply pasting it on a
eet of paper?
A. Yes, sir.
Q. Now, I show you Government's Exhibit 33, being the Phila-
elphia Tageblatt for Monday, September 3rd, 1917, and call your
ttention to an article appearing on page 4, column 4, just before
number of other dispatches there headed "Further Economies,"
nd ask you if you know whether that was a clipping, or whether it
as inserted by your responsibility or not.
A. I can give you exact information about that article. I do re-
member it very well.
34 Q. Well, suppose at the same time you give me the infor-
mation and so that you may give that without my repeating
uestions, I show you the Government's Exhibit 37, which is a
lipping, and tells the whole story of that article. (Handing to
itness.)
A. That is the same thing.
Q. That is the same article? That is the clipping from which
his was taken?
A. Yes sir. There were two clippings. This that was taken
ere was taken. at the first trial, that was not an editorial remark.
Q. Explain that article itself. In the first place, the article was
clipping, was it not?
A. The article was a clipping.
Q. And from what paper, do you know?

A. It looks like the Staats Zeitung.

Q. When you put that clipping on the paper, you added this torial comment on the side?

A. Yes.

Q. What we want to know, is this: There is a clipping and is some writing alongside of it, and the insertion in the newsp appears to be a clipping, with that writing, and then there was change in your headline.

A. The same item that is in the Staats Zeitung was in
535 other German afternoon paper of New York, and I ca say whether it was the Journal or some other paper. It that addition, and it didn't look like an editorial remark. It simply copied without,—and I remembered very well, for I angry about it, because it is hard for me to write, and the reas remember it, that I could not use the other clipping, was that t was something on the other side of the page that I had to clip, I could not clip that.

Q. So that you used this clipping and wrote the balance of it

A. Yes sir.

Q. What was the headline originally, and what did you m of it?

A. The headline was two lines, and we needed only one line, that is the reason I crossed one out.

Q. What was there in it, to see if you altered the sense of it?

A. This "Holland regards further economies necessary," an headed it "Further Economies."

Mr. Roberts: There is no complaint about that headline.

By Mr. Gray:

Q. I show you Government's Exhibit 38, which is the Phila phia Tageblatt for Tuesday, September 4, 1917, and call your at tion to page 1, column 6, and under it, and on another page, v some sub-heads, appears some other dispatches, but this is the which I want to call your attention to, where there has b
536 a pencil mark at the heading of "Sarrail's Troops Beate Now, do you know whether that was a clipping or a tran tion?

A. I cannot say positively, but it looks like a clipping.

Q. You think it looks like a clipping?

A. Yes.

Q. Now, I show you Government's Exhibit 42, purporting to a clipping, and ask you whether that is the clipping from wh that article was taken. (Handing to witness.)

A. Yes sir.

Q. Now there seems to be some correction in the body of t article there, and some correction, in handwriting, in the capti

Mr. Roberts: The dates are changed.

By Mr. Gray:

Q. There is a change of the date, made necessary by the fact that an afternoon paper takes an article from the paper of the day before they have to change the date and make it one day later.

A. Yes, sir, that is right.

Q. And you changed that without any intention of antagonizing the United States Government, did you?

A. Yes, sir.

Q. Now, I notice a change in the caption also, in somebody's handwriting; is that your handwriting?

537 A. Yes sir.

Q. This is yours?

A. Yes sir.

Q. What is the title that you changed it to? Give it to us as it is changed, and your reason for changing it.

A. This here was in three items or lines, and we made it into one short title, and that is three long titles, and we had to change it. The three larger titles said "Sarrail's Troops Beaten."

Q. What is that second one?

A. It says the official news from Berlin, it means that it miscarried entirely.

Q. It meant that the official dispatch from Berlin had *d*iscarried entirely, about this great attack?

A. Yes, and the third title was about that place called Monastir, in the country, and that the road leading to Prelip was the place of the fighting.

Q. It meant the road around Monastir, on the road leading to Prelip?

A. Yes sir.

Q. Then out of these three several heads you changed it into one head to express all of that?

A. Yes sir.

Q. And what did it say?

538 A. It says "Sarrail's Troops Beaten," and I think that is the right title for it.

Q. In other words, you had two heads, one that they were in a great attack, and the second that they had been beaten?

A. According to the official news, that the attack had failed.

Q. And you changed these three heads until you had one?

A. Yes.

Q. And that was what?

A. That Sarrail's troops were beaten, yes sir.

Q. And you thought you were justified in doing that, and in making it read that way, because you only wanted one headline?

A. Yes sir.

Q. I show you Government's Exhibit 43, which is the Philadelphia Tageblatt for Friday, September 7th, 1917, and show you an article appearing on page 1, article 1, which is one of the sub-articles under the larger one, which is headed "For Political Reforms." Tell me

if you know whether that article was a clipping or a translation whether you are responsible for its being put in the paper?

A. I cannot tell whether that is a clipping or a translation.

Q. It seems to be a clipping. There is no correction on th cept the pen lines drawn through certain words. I will ask whether you know who drew those lines, and whethe

539 had anything to do with that or not.

A. Well, I see only the figures "102," and I am not whether I wrote that "102."

Q. Do you know whether you drew these lines?

A. No, I cannot tell you about the lines.

Q. If you know, I would like to know. Take this paper, an me what does that line read.

A. It says "German Troops attack further in Liveland. German flag is already in the north of Riga." Then the ne that the attacking of the mountain, in Italy, naming it, was not

Q. What is this head, over this article there (indicating)?

A. That says "Better wait first." We had to make some words, because we could only use eighteen letters; we are only all to take in eighten letters, unless you can make some understan of the article, it is not possible.

Q. What are those sub-heads there? I want to know what whole column is about.

A. That is that the German Socialistic and Democratic pap Berlin declares that Germany does not want any foreign land. the answer of the Pope will show whether that is true or not; then, that the article appearing from Washington was that it bel that the peace possibilities have been bettered.

540 Q. In other words, it is a discussion over these dispat

A. Yes, sir and this one says, "For further reforms."

Q. I show you Government's Exhibit No. 43, which is Phil phia Tageblatt of Saturday, September 8, 1917, and call your a tion to the article on page 4, column 4, which is headed, "What this mean?" which is a dispatch from Washington. Now, Mr. erts has produced a clipping, and I ask you, showing you Gov ment's Exhibit 51, whether that was taken from that clipping (s ing to witness)?

A. Yes sir.

Q. And is there anything in that clipping that indicates to whether you are responsible for the insertion of that article in paper?

A. The title for the additions to the second title, are mine.

Q. Now, there is no complaint, as I understand it, that ther any change in the article itself, but there is a *change* as to the cha of the headline. Tell me what the headline was in the clipping, what change you made.

A. The original clipping had only one headline, which says, "S cides in Pershing's Armies." Well, I regarded that as an import thing, and that it justified making two titles for it. Of course so of the item is more important, and we could make more headi

for it, and I wanted to have "What is the meaning of this?" added, so I put in this, "What does this mean?"

Q. Then you put another heading there? What is that?

A. It is "Many suicides in Pershing's Army reported," so as to ke two lines, for the second was needed to make the two lines.

Q. Your flare-head is one line?

A. Yes sir.

Q. And your sub-caption is the lower of the two lines?

A. Yes.

Q. And to your title "Suicides in Pershing's Army," you added any suicides in Pershing's Army reported"? You added the rds "many" and "reported"?

A. Yes sir.

Q. And your reason for that was that it needed both lines?

A. Yes sir.

Q. And you have used the word "many" at one end, and the word ported" at the other?

A. That word "reported" is simply to make the line longer. There no meaning to it whatever. And that word "many," I used there er deliberation. I considered that item in a good many ways. e idea was that out of twelve soldiers that died in France, four of m committed suicide.

Q. And that was in the proportion of 33 1-3%?

A. Yes, and I know that where statistics of suicides are made, it is compared with the number of the dead, and is ver compared with the number of the living. If you say eighteen, means that eighteen suicides are out of a number of dead. So at the suicides are not made by comparison, taking the number of icides with the number of the living, but by comparison of the mber of suicides with the number of the dead. If anyone said ere was twenty deaths, and five were suicides, that is too many of e twenty dead, to commit suicide, and the expression is wrong, be- use the usual ratio, if I am not mistaken, is for the suicides to be om two to three in a thousand deaths.

Adjourned to Thursday, September 26th, 1918, at 10 a. m.

Fourth Day.

UNITED STATES

vs.

SCHAEFER et al.

Philadelphia, Pa.,

Thursday, September 26, 1918—10 a. m.

Present: Parties as before noted.

Dr. MARTIN DARKOW, heretofore sworn, recalled.

By Mr. Gray:

Q. I show you Government's Exhibit No. 52, which is the Philadelphia Tageblatt for Saturday, September 8, 1917, and call your attention to an article appearing on page 1, column 5, a small article among some others, headed "Ready for the Fray," and ask you whether that was a clipping or a translation, if you know, and what, if anything, you had to do with the insertion of it in the paper?

A. As to the first question I cannot answer. I don't know whether it was a clipping or a translation. As to the second question, I will have to answer as I answered on the former cases.

Q. I show you Government's Exhibit No. 56, which appears to be a clipping, and ask you to look at that and say whether you can give us any other answer as to the first question?

A. The title, the heading, is written by me.

Q. That is, the exhibit I just handed you is a clipping from some other paper?

544 A. Yes.

Q. And it has on it a heading in handwriting?

A. Yes. The handwriting is my handwriting.

Mr. Gray: I think the only complaint there is about what the title is, is it not? I know of no other.

Mr. Roberts: I will tell you in a moment, Mr. Gray.

By Mr. Gray:

Q. That article had no heading on it at all, and you put the heading on it. That is so, is it not?

A. That was probably part of other articles which had a heading.

Q. It had a general heading?

A. Yes, sir.

Q. But this specific article had no heading?

A. Had no heading.

Q. That is correct, is it not?

A. Yes.

Q. The appearance of the paper indicates that. I call your attention to a line drawn through a sentence in the middle of a paragraph, and ask you whether you drew that line through, and if so, why?

A. I cannot say that I drew the line, because I cannot recognize that line as my line, but it is very likely that I did it, as I made the whole article.

Q. Government's Exhibit No. 57, which is the Tageblatt for Wednesday, July 4, contains an editorial for the Fourth of July, about which you heard Mr. Werner testify yesterday. Had you anything to do with that article?

545 A. No.

Q. Government's Exhibit No. 59 is a Philadelphia Tageblatt for Monday, August 6, 1917, and in it I show you an article appearing on page 4, column 4, headed "Yankee Bluff." Will you

me, if you please, whether that was a clipping or a translation, ou know, and what, if anything, you had to do with the insertion he article in the paper?

A. As to the first question, it looks to me as being a clipping. I not think that that was a translation. I think it was taken out -I am only thinking that—the Staats-Zeitung. As to the second stion I cannot tell for sure. Of course, it is likely that I did it.

Q. I show you Government's Exhibit No. 61, which is the Phil-lphia Tageblatt for Saturday, July 7, 1917, and call your atten-n to an article appearing on the fourth page, column 1, which is ded "Failure of Recruiting." It appears in the editorial column, I would ask you whether you had anything to do with the writ- of that editorial?

A. Not the slightest.

Q. Not the slightest?

A. No.

The Court: Mr. Gray, will you let me ask you about the previous ? What the witness said about it?

Mr. Gray: The previous one he said was probably a clipping and a translation, but that he could not say whether he had anything to do with the insertion of it in the paper, or not, although I think he said something to indicate his general responsibility, because of the fact that he handled that character of news.

Mr. Roberts: He said "probably."

Mr. Gray: I say, he said something to indicate his general respon-lity. I do not know what his language was. I do not recall it.

By Mr. Gray:

Q. I show you Government's Exhibit No. 63, which is the Phil-lphia Tageblatt for Monday, July 2, 1917, and call your atten-n to an article on page 1, column 4, the article standing by itself, ded "The Crack Shots," and ask you whether that was a clipping a translation, and what you had to do with the insertion of it in paper?

A. I think that is a clipping, but I am not sure.

Q. You think that is a clipping, but you are not sure?

A. I am not sure of that. It strikes me that the editorial remark he end is made separately. I do not know that. It may be the torial remark is made up of the clipping of a paper, the paper t published the clipping. It is simply taken off.

Q. You mean the entire article as it appears there might have n lifted from another paper?

A. Yes, with the editorial remark, and I will have to repeat the e thing about the article that I said before, it is likely that I had t article. It is likely that I gave it to someone else, and he made

Q. I show you Government's Exhibit No. 71, which is the Philadelphia Tageblatt for Friday, June 22, 1917, and call your attention to an article appearing on page 7, column 5, ch is under the general editorial column headed "The Prom-

enader," and ask you whether you recollect that article, or know
thing — it, headed "Be Thankful."

A. No, I did not write it.

Q. And I call your attention to Government's Exhibit No.
being a copy of the Philadelphia Sonntagsblatt for Sunday, the
day of July, 1917, and call your attention to an article appearin
page 1, column 5, headed "Peace," and ask you whether that
clipping or a translation, and what, if anything, you had to do
it?

A. I am perfectly sure that I had nothing to do with that art

Q. You are perfectly sure that you had nothing to do with
article.

A. It is a Sunday.

Q. I show you Government's Exhibit No. 75, which is the P
adelphia Tageblatt for Wednesday, July 18, 1917, and call
attention to an article appearing on page 1, column 3, the tr
lation of which the Government has for the heading as "This Sou
Good," and ask you whether that was a clipping or a translation,
what, if anything, you had to do with its publication?

A. This is a composite article. There are several things in
More than two columns. It is very likely, therefore, that
548 first news was translated, and the later news was clipped,
cause that was a custom of the paper. If we had sev
news, which was of the same import, touching the same questi
we took them together. The latest news, that was not in Germ
we translated, and put it in first with the heading, and the news t
was clipped, we put afterwards. It has more than two columns.
is probably partly a clipping and partly a translation.

Q. In other words, there would be some later news in the Engl
paper, about the same subject as you had clipped the article from
German paper?

A. Yes.

Q. And you just put the two together, putting in the latest ne
from the English paper. That is your translation of it first?

A. Yes.

Q. And do you know whether you were the one that was resp
sible for that?

A. I will have to repeat the same as I said before,—I am not su

Q. You are not sure?

A. It is very likely.

Q. But you had charge generally of the news at that time?

A. Yes.

Q. In the same exhibit I show you an article on page 7, colun
3, headed "The Review of 1916." We have already had some tes
mony about that, but I will ask you what you know abo
549 that article?

A. I know from the looks of it that it is plate matter.

Q. Plate matter?

A. Yes.

Q. We have had plate matter explained, so that we will not a
anything further about that. I show you Government's Exhib

No. 78, which is the Sonntagsblatt for Sunday, July 22, 1917, and call your attention to an article appearing on page 7, column 3, which appears to be an editorial. It is the one that starts with the name of "Roth." What, if anything, do you know about that article? It is the article that Mr. Werner said he declined to answer with reference to.

A. I want to remark that it is not an editorial. It is part of the Spazier-Ganger. The editorials are always on the fourth page. I had nothing to do with it.

Q. You had nothing to do with it. That is what I want to know. I show you Government's Exhibit No. 80. I think I need not ask you anything about that, because Mr. Werner said he wrote it. The editorial "Gloom upon Gloom." You had nothing to do with that?

A. Nothing.

Q. I will save as much time as possible. I show you Government's Exhibit No. 82, being the Philadelphia Tageblatt for Saturday, August 4, 1917, and call your attention to an editorial on page 4, column 1, headed "At Last Joyous News," and ask you what you know about that or what you had to do with that editorial?

550 A. I will look at the date. At that time, on the 4th of August, I was on my vacation. I was not in the city.

Q. Does that mean that you did have or did not have anything to do with it?

A. I did not have any knowledge of it at all.

Q. I show you Government's Exhibit No. 84, which is the Philadelphia Tageblatt for Wednesday, August 8, 1917, and call your attention to an article appearing upon page 1, column 3, headed "Objects of the War," and ask you whether that was a translation or a clipping, and what you know about the publication of it?

A. This is also a composite article. I think the first part was translated and the second was a clipping, but I am not perfectly sure of it.

Q. And can you tell us what connection you had with it?

A. I will have to repeat the same thing. I want to remark, in connection with these questions, that I used to come to the office at 6 o'clock. The compositors started to work at 4 and sometimes half past 3. The city editor and the other editor that was there had to fill them up. He gave them always copy enough. The compositors had four machines, linotype machines. One man or two men can hardly fill them for four machines. A man can do work enough for one machine, but not for four machines. So they had to make clippings before I came. They usually took clippings from New York, Washington, and some local news, but this local

551 news from other cities was not interesting to our readers. They want more interesting news. Sometimes war news in the evening papers or the morning papers, and we gave that out to our compositors to print. So that I never can know in such case whether I made it or I did not make it. It is very likely I made it. It is possible. If I would have been asked some time that next week, I would have remembered it, but it being so far away I cannot re-

member what I did or did not do. If I would have written the article I would have remembered it, but not when a clipping was made, or a heading, it is impossible for me to remember, to say for sure, whether I was responsible for it, or I was not responsible.

Q. In other words, it might have been given to the compositors by some of the editors before you got there?

A. Yes.

Q. Or you might have given it to the compositors?

A. I cannot recollect it any more.

Q. I show you Government's Exhibit No. 86, being the Philadelphia Sonnstagsblatt for August 19, 1917, and call your attention to an article in the Spazier-Ganger, page 7, column 3, starting with "Mr. Elihu Root." Tell me what you know about that?

A. I had nothing to do with that article.

Mr. Gray: I think that covers all of the exhibits. It does, does it not?

Mr. Roberts: Yes.

Mr. Gray: I think we can save considerable time, unless
552 Mr. Roberts prefers me to do it otherwise—I want to have him identify a number of translations. I have not had a chance to examine them. It may be that some of them are important, and some of them I will want to use, and some I will not. They are these sheets of paper. I imagine Mr. Roberts will trust me to keep them together, so that I will only use those that are identified afterwards, if we find occasion to use them.

By Mr. Gray:

Q. Mr. Darkow, you had made some translations from various articles appearing in the newspapers, that is, in the Tageblatt, between April 3 and September 10, 1917, did you not? You had that done, I mean, under your direction?

A. You mean the articles translated from the Tageblatt into English?

Q. Into English, yes.

A. It was not made under my direction.

Q. It was not done under your direction?

A. No, sir.

Q. Do you know by whom it was done?

A. It was done by two editors of the Philadelphia Tageblatt.

Q. Then, after that was done, did you examine all of the translations?

A. I did not examine all. I only sampled some to see whether the translation is correct. Not all, but several of them.

Q. I will have to ask you, then, notwithstanding the time it will take, to examine each one of these articles, and tell me
553 whether the translation is correct, then.

Mr. Roberts: Perhaps I can shorten it, if the Court please. I think maybe we can.

Mr. Gray: They are subject to your examination and Mr. Peck's examination at any time.

Mr. Roberts: It will take a little time to examine them either way. I will do my best to have them examined. I have no question that they are correct. I know that Mr. Gray wants them to be correct, and if they are not correct, it is because of some defect in translation, and not from any wrong ideas at all.

Mr. Gray: It might have been that I misunderstood Dr. Darkow. I understood that he examined them and found them to be correct. It may be that I may have misled him. I understood he had examined them all, and he knew them all to be correct. Of course, when he says he only examined part of them, that may mean one part or another, and therefore, it is not complete.

Mr. Roberts: Yes. Let him identify them anyhow as things he got translated.

By Mr. Gray:

Q. I show you a number of sheets of paper here with handwriting in English and ask you first whether they are the translations that you referred to that were made from the newspapers in question. What is your answer?

A. My answer is yes, these are translations I have seen, but I don't know whether they are or not.

554 Q. But you see those that you have got in your hand now?

A. Yes, I do.

Q. You have examined some of them?

A. Some I sampled to see whether those two editors are able to translate from German into English.

Q. Did you find those that you sampled correct?

A. I found them correct. I did not find them in very elegant English, but I found them correct, exactly giving what was in German.

Q. Can you give me what ones you did sample?

A. I cannot say that.

Q. Can you tell me who translated them?

A. Two editors, Mr. Nachold of this city and Mr. Latta of New York city, who worked in the Tageblatt at that time.

Q. Are they available now?

A. I cannot tell that. I do not know.

Q. You don't know whether they are with the paper now?

A. As much as I know, I don't know what is going on with the paper. As much as I know, Mr. Latta went back to New York or Brooklyn, and Mr. Nachold left, but he is here in the city.

Q. Mr. Nachold left, but is here in the city?

A. Yes.

Q. And the other man went back to New York?

A. Yes. He is an architect by trade.

Mr. Gray: Mr. Roberts, you will have to accept them, subject to Mr. Peck's examination, or I will have to let him take them, article by article.

555 Mr. Roberts: I suggest this course of procedure, if yo
Honor pleases, and if it meets with Mr. Gray's approval, t
we allow them to go in evidence, subject to my right, after havi
them examined, and cross examined Dr. Darkow, as to any of the
on the correctness of the translation, or to call a witness, if I
choose, to correct which I think is an incorrect translation. T
only question in my mind is to the accuracy of the translations
I do not mean an improper inaccuracy but a possible inaccura
Where a German-speaking man attempts to translate into Engli
there may be inaccuracies.

Mr. Gray: That is perfectly satisfactory to me. In other wor
they enter into this case as evidence, Mr. Roberts, of course, havi
the right that he has specified, which right, I think, he has anyh

Mr. Roberts: Yes.

Cross-examination.

By Mr. Roberts:

Q. Dr. Darkow, in preparing news articles, did you ever atta
to the news articles editorial comment, or explanatory commen

A. I will explain that. When the war broke out, and I start
the war news on the German papers, in America, they had a
of editorial comments, lots of editorial comments. All the Germ
papers in America had lots of editorial comments, so I had t
Staats-Zeitung, the Journal and so on. If we took the cl
556 pings sometimes we crossed out the editorial commen
Sometimes we left them there. Sometimes we made editor
comments which were not in the clippings. But the moment Am
ica entered the war we had to change that policy, because the e
torial comments we made before were mostly pro-German. T
paper was pro-German before America entered the war, but af
America entered the war I think I did not make one editorial co
ment any more.

Q. How was the editorial comment separated from the news
ticle? Wasn't it given a parenthesis?

A. Usually by parenthesis.

Q. Let me, for instance, take Government's Exhibit No. 73 of t
Sonntagsblatt of the 15th of July, 1917, and I call your attenti
at the end of the first article to a matter appearing in brackets
parenthesis.

A. That is an editorial comment.

Q. That is an editorial comment?

A. Yes, sir. It is not translated.

Q. It is not translated?

A. No, sir.

Q. I show you Government's Exhibit No. 94, which is the Phil
delphia Demokrat of Saturday, the 14th of July, the previous da
and ask you if the article which I have shown you in the Tageblatt
not a clipping from the Philadelphia Demokrat, and whether
contains that editorial comment, or whether that was added in yo
office?

Mr. Gray: That article is not in the indictment.

557 Mr. Roberts: No. It is one of the intent articles.

The Witness: It is literally the same, with the exception of the second part here that the Demokrat has not taken. This part is not taken in.

Q. Not taken in. You took the Demokrat down to an intermediate headline?

A. Yes, sir. I cannot say that it is taken from the Demokrat, because very likely the Staats-Zeitung had the identical dispatch.

Q. It is taken from a dispatch?

A. It is the same thing.

Q. Exactly the same German words?

A. Yes.

Q. Word for word?

A. Yes.

Q. Does this dispatch contain editorial comment?

A. This is a report in the Demokrat. This report in the Demokrat does not contain editorial comment. This news dispatch in the Demokrat does not contain editorial comment. That is the report of a correspondent. That is not a news dispatch, not a real dispatch. We call it a report. There is a difference of opinion.

Q. Will you see if I have that editorial comment correctly? I will just read the editorial comment. "So they have already begun to crawl out of an untenable position. The reform in Germany, which of course will be credited to America, must serve as

558 an excuse. If Germany reforms herself, she does not, of course, need to be liberated from here. Besides it makes the lazy allies feel sour. That seems to be realized now. They just want to borrow all Uncle Sam has; they are good for nothing and their cause is hopeless."

A. That translation in one respect is not right. Here it says "sour." That is not the right translation.

Q. What is the German word?

A. That is a colloquial phrase.

Q. What is the word?

A. It is vinegar. It is vinegar, but it does not mean it is sour. It means something acid.

Q. "Besides it makes the lazy allies feel sour." It should be "Besides it makes the lazy allies like vinegar"?

A. Yes, but it has absolutely no sense in English.

Q. What sense has it in German? Give me the English sense of it. "Besides it makes the lazy allies feel sour."

A. It is nothing. I cannot translate that.

Mr. Gray: He is answering a question about an article which he says he had nothing to do with.

Mr. Roberts: Which I shall claim that he, amongst others, was responsible for.

The Witness: I cannot translate that any better. It is nothing. It is nothing.

Q. It is nothing?

A. It is nothing. It is not anything. It is nothing.

559 cannot be translated. It is absolutely a colloquial phra

Q. But the rest of the phrase is right, "It makes the la allies"?

A. Yes, the rest is translated correct.

Q. I also want to ask you about another article as to which y said you probably had some connection. That is the "Objects of t War," which is Government's Exhibit No. 84. I call your attenti to an article, which is on page 1, column 3, and ask you if th article contains editorial comment at the end.

A. Yes, that has editorial comment at the end.

Q. It has editorial comment at the end in parenthesis, has it no

A. Yes, sir.

Q. See if I have the correct translation. "This story of a c respondent of the United Press is naturally not to be taken seriousl No one doubts that the Allies have such a piratical design, but impassable gulf yawns between this good purpose and its carryi out. Even if the Allies had occupied enemy territory in the mea ure that the Central Powers have succeeded in doing, they could n bring about a peace according to these fantasies. The weaker t military position of the Allies gets the more they attempt to glo over their failures by bragging."

A. That is a good translation.

Q. That is a good translation?

A. Yes, sir.

560 Q. That article is a leading article on the first page of th paper, is it not?

A. Yes, sir.

Q. And it is an article on a Wednesday?

A. Yes.

Q. And the date is the 8th of August?

A. Yes.

Q. Wednesday, the 8th of August?

A. Yes, sir.

Q. On "The Objects of the War." I read to you the editori comment. I will read the article to you with the editorial com ment later. I do not want to take the time up now. Let m ask you as to another article on the same line. This is an artic that has not been offered in evidence

Mr. Gray: Is this one of those in the papers I offered?

Mr. Roberts: Yes.

By Mr. Roberts:

Q. I show you Government's Exhibit No. 67, which I did no offer in evidence, but which is included in Mr. Gray's offer, th article headed "We are Ready." Does that article purport to be news dispatch?

A. Yes.

Q. Did you prepare it?
A. I cannot say that.
Q. You cannot say?
561 A. No.
Q. It purports to be a dispatch from Berlin?
A. Yes. Three places.
Q. Also one from Washington?
A. Yes.
Q. Also one from Paris?
A. Yes, and one from Amsterdam. Three of them.
Q. That contains some editorial comment, does it not?
A. After the Washington——
Q. No, in the Berlin article. Is there not a parenthetical question mark after the third line?
A. I would hardly call a question mark an editorial comment.
Q. You would not?
A. No, sir, I don't think.
Q. You think that was in the original dispatch?
A. It might have been.
Q. Then there is, two or three lines down, a word in parenthesis, the word "Unconquerable." That is inserted, is it not?
A. That is in parenthesis, "Unconquered."
Q. Is that inserted, or do you believe that was in the original dispatch?
A. It might have been in the original. It may have been a clipping from the original clipping. That was not a dispatch.
Q. At the end of the Washington dispatch there is another editorial comment, isn't there?
A. Yes, there is.
Q. I want to ask you if I have that translation correct, be-
562 cause I do not want to use it unless it is a correct translation.
"We are Ready." That is the headline. "Germany gives a Reply to Admiral Sims' Highflown Words. Two German U-Boats are said to Have Been Sunk. An Announcement From the State Department, Which, However, Is Not Yet Confirmed. Berlin, June 6. American Rear-Admiral Sims, commanding a small torpedo flotilla sent by the United States to England to support the mighty British fleet in its fights (?) who has been publicly entertained in London, expressed his hope at a banquet that in a new sea fight like that of Jutland the American (unconquerable) boats would take part in a battle. The local 'Lokalanzeiger' remarks upon this that the Admiral may be assured that the German fleet wishes for nothing more longingly than for such a meeting with its enemy. 'We hope that he will soon show us the favor to come out and bring out his ships from their safe harbor. We will take care of the rest.'"
Then a sub-heading.
"Presumably Sunk. Washington, June 6.—An American merchant vessel has sunk a German U-Boat of the newest type after one and a half hour's fighting. The name of this steamer and the place of the action are not given. The Department of State to-day an-

nounced the successful engagement. When the German U-B
was seen last it was sinking. The fight commenced at a distance
2300 yards. Before it ended the U-Boat fired 35 and the stea
25 shots. The American steamer fired first and then
563 U-Boat which carried two guns replied. The steamer suffe
no damage. In naval circles the news of the successful
fight caused great joy."

There the dispatch ends and the editorial comment begins doe
not?

A. Yes.

Q. I will go on with the comment. "(Of course this news is wa
ing of all confirmation from German sources. It purports to
proof of the fact that a German U-boat fires 35 shots without o
hitting its mark. Mr. Lansing may believe this, but no one
who knows the German fleet.)" That is the end of the comment
it not?

A. Yes.

Q. The news dispatch. "German Submarine Defeated. Pa
June 6.—The Minister of Marine reports the defeat of a Germ
submarine in a fight with the French Steamer Orinoco. The
noco, a vessel of 2372 tons, was attacked on April 22, in the Atla
Ocean, on a voyage to a West African port. The submarine ca
into view when it was still half submerged, and approached
steamer in a heavy sea. The captain of the steamer immediat
opened fire and after the fourth shot the submarine vanished."

A. Yes.

Q. Then there is another one. "Loss Acknowledged. Amst
dam, June 6.—A dispatch received here from Berlin states that
German Admiralty has given out the following version of
564 British naval attack on Ostend:

'Enemy monitors shelled Ostend on the morning of Ju
5. They killed and wounded a large number of the Belgian pop
lation and did considerable damage to houses. Reconnoitering w
ships of marked superiority, which accompanied the advancing mo
itors, encountered our two sentry torpedo boats. After a sharp e
gagement, S-20 was sunk. She continued to fire until the l
moment. We rescued a part of the crew. The enemy ships we
struck in several places and withdrew before the fire of our co
batteries.'"

Then there is another sub-heading. I will read that if you wa
me to. They are all in one. The next one is "36 Drowned. Par
June 6. It was announced here to-day that of the 590 persons
board the French passenger liner Yarra, which was sunk in th
Mediterranean, 559 were saved. The Yarra was torpedoed by
German submarine. Owing to the coolness and discipline of th
crew, it was possible to save most of the people on board. After sh
was struck, the steamer sank very rapidly."

"On the Hunt. An American Port, June 6.—The reduction i
the U-boat toll can be ascribed to the activity of American war ve
sels in the barred zone, according to passengers arriving here fro

Europe. Hydroplanes support the war vessels; they rise from the decks of American patrol boats.

565 Galveston, Tex., June 6.—Captain Houghland, and the crew of twenty, of the Norwegian steamer Crosholm, who have arrived at this port, report the sinking of the Crosholm on May 15 last by a German submarine. On that day, as the Crosholm was proceeding to an American port in ballast, at about 200 miles west of the Irish Coast, the attacking submarine opened fire without warning. Captain Houghland signalled, hoisted the Norwegian flag and stopped. The shell fire cotinued and the life boats were swung clear. Finally the Crosholm was torpedoed. The crew was picked up on May 16th at 11 A. M."

That is a fair translation of that article?

A. Yes, sir.

Q. I show you Government's Exhibit No. 63, which is in evidence and call your attention to the article "The Crack Shots." You say you don't know whether you prepared that article or not?

A. I could not say.

Q. Is that an editorial comment at the end of it in brackets?

A. Yes.

Q. It was published on what day?

A. On the second of July.

Q. The heading of that is "The Crack Shots," and under that, "Again Think they have hit a German Submarine. London reports astounding deeds of armed steamer." That is a correct translation?

A. Yes.

Q. "London, July 1.—According to a report received today naval gunners on an armed American liner have once more per-
536 formed heroic deeds on its voyage here. The unnamed steamer was attacked by two submarines. Although the submarines were at a great distance, they were fired at, and with such excellent aim that the crew believes it struck one of the submarines. A third submarine appeared but quickly submerged again. The passengers of the steamer were overcome with admiration for the masterly American gunners, who had already given signal proofs of their skill during the trip by hitting a barrel seven times out of eight. One member of the armed crew is an Englishman." Then comes the editorial comment in brackets?

A. Yes.

Q. "(This story is obviously to be classed with the other similar stories that bob up from time to time but can never be reliably confirmed)" That is right, is it?

A. That is right.

Q. You say that editorial comment may have been put there then or may have been put there by someone else?

A. I could not say that. If I would see it, I would know who put it in, but I cannot say.

Q. When Mr. Werner was not there who handled the editorials?

A. Nobody had a right to handle the editorials but Mr. Werner. He either left some editorial or sent some clipping.

Q. He either left an editorial or sent a clipping?

A. Yes, he left an editorial when he went away and said "I not be here tomorrow. There is an editorial for the next day," he sent clippings, or he left clippings.

567 Q. And you simply put in those clippings?

A. I did not put any in at all. He gave them to one the compositors.

Q. You mean he would leave the compositors enough clipping cover his absence?

A. Yes, sir.

Q. So that any editorials that appeared during this whole per were either written by Mr. Werner or were clipped by him and with the compositors?

A. With the exception of one or two editorials which I wrote wh he was away on his vacation.

Q. When was he away on his vacation?

A. I think between the end of June and the beginning of July.

Q. If I told you that he was registered in Atlantic City on Ju 1st and left on July 3rd, would that correspond with your recoll tion?

A. Probably. I don't know whether he was three or four da off.

Q. Then, did you ever clip any editorials?

A. No.

Q. Not once?

A. Not once.

Q. In the period?

A. No, sir, no period.

Q. In no period?

A. In no period.

Q. You read the paper?

568 A. I must say not very often.

Q. Did you read the editorials?

A. Sometimes.

Q. Do you remember the Fourth of July editorial?

A. I did not read it that day.

Q. Did you read it the next day?

A. Yes, I read it. I know I read it since the indictment.

Q. Not before?

A. No.

Q. You never knew of it before?

A. No, I would not say that. I mean he wrote the editorial fo the Fourth of July and I did not read it. I want to explain that I read the newspapers in the morning in my home, the English news papers, and the Tageblatt I do not read unless I read the proofs, as a proofreader. So I did not read it. I had no opportunity to read it.

Q. Did you read proofs of the editorials from time to time?

A. Sometimes.

Q. Of course, the sense of those you would get when you would read them?

A. Yes. I could not change anything in it.

Q. You could not change it?
A. No, only faults. Only faults of the compositors.
Q. Typographical errors?
A. Yes.
Q. And your particular department was the department of foreign news?
A. Of all news, besides the city news. You cannot call it foreign news. Washington news.
Q. When I use the word "foreign" I mean outside of Philadelphia?
A. Yes, outside of Philadelphia.
Q. That would cover news from Washington?
A. Sure.
Q. National news and international news?
A. Yes.
Q. You say during the war the paper was pro-German—prior to the war with America and Germany?
A. Yes, from the beginning of the war the paper was anti-Kaiser and pro-German. It was a pro-German paper.
Q. Then the policy, you say, changed immediately upon the outbreak of the war?
A. I could not say about the change of the policy because you could not change it by the editorials. You could not change the policy by that. Not immediately. But you could not continue pro-German with the United States in the war. That is clear. Of course, it had to flop, but the flopping could not be made from one day to the other, because we might have lost all our subscribers in Philadelphia. You understand. I want to explain that. If we would have written an article, "The Huns are Beaten," we would have lost our subscribers the next day altogether.
Q. You mean you felt your subscribers were people whose sympathies were with the Germans?
A. We felt that way. We felt we had the right before that, before we entered the war, to sympathize with Germany, and we felt, especially I—I cannot say what others felt, I know the way I felt,—I felt they could not like America better if they would not like Germany well. It is like a fellow that has a mother and marries. If he does not like his mother he will be a bad husband. I felt that way.
Q. In other words, if they did not like Germany, they would not be good——
A. They would not like any country, wherever they were. They could not like any country, then. Of course, they had to be brought to another idea than they had then, because before America entered the war we were pro-German. We had the German point of view. I do not mean I personally. I want to explain that to you. I could not personally ventilate my views. I had nothing to do with the writing. My personal views did not enter into it at all. Our paper was a German paper. We could not write a prohibition article. I may be a prohibitionist, but I could not write a prohibitionist article. You understand that very well. If I would have written a prohi-

bitionist article, I would have been fired the next day, and perfectly justifiable. I had to take the paper as it is. It was not my paper.

Q. The paper did have a policy?

A. Yes, it had a policy.

Q. And that policy was understood?

571 A. I had asked several times Mr. Werner the question of the policy when I came to the paper. I was not before on a labor paper. The paper was a labor paper, for the labor classes, and questions of the labor classes. For 16 years I worked on a different type paper, and I did not understand it. When I found out about the I. W. W., I did not know what it was. I had to ask Mr. Werner about that. Mr. Werner told me we are not in sympathy with them. He told me the methods.

Q. You and Mr. Werner, then, did have conferences about the policy of the paper?

A. No, only to ask him on such occasions where I did not know. That was long before the war. When I entered the paper I asked him what the policy was on the labor question.

Q. And when you say the policy of the paper was pro-German before the war, you mean merely that everyone understood that fact?

A. We took all the news from other pro-German papers, and they were all pro-German. They were anti-English, I might say. They were not so anti-French. Some of the papers were very pro-Kaiser. Some of the German papers and some of the American papers. The German sympathies were pro-Kaiser. I mean they were not only pro-German but pro-Kaiser. There is a difference. The Philadelphia Tageblatt was not. I knew that.

Q. You say that you all realized after the war broke out that you had to flop, but you would have to do it gracefully?

A. Yes, we had to do it gracefully, or we would lose all our subscribers and another paper would get them. That is as clear

572 as anything.

Q. This article, "Yankee Bluff," that you have been shown, was published on the 6th of August, after the United states had been at war since the 6th of April. That is right, is it not?

A. Yes.

Q. In other words, exactly four months after the war broke out?

A. Yes.

Q. That is a large headed article, is it not?

A. Yes.

Q. I understood you to say that you had to compress your reading matter and, therefore, you did not give two or three headings to an article unless it was an article that was considered of some importance?

A. Yes.

Q. Is that correct?

A. Yes, that is correct.

Q. That is a three-headed article, is it not, or two?

A. That is a three-headed article.

Q. And under that heading there are two articles inserted, are there not?

Yes, one from London and one from Paris.
The first one from London tells about Ambassador Page's state- as to what great effort the United States would make to help llies, that they would probably send ten million men, to end ar victoriously, and so forth?
A. Yes.
Q. And then the second article purports to be a statement from Berlin, from the Tagliche Rundschau, the article being rofessor Jenny, in which he says all the statements of the Yan- are bluff?
Yes, sir.
And in which he says, "If they do not stop their boasting and ing, they will get lockjaw, and a good box on the mouth," so on. That is right, is it not?
Yes.
r. Gray: "A good box on the ears."
r. Roberts: Yes.

By Mr. Roberts:

Two dispatches in one article?
Yes.
As you read that, to which of these articles would the heading nkee Bluff" apply?
To the second one.
To the second one?
I want to explain that. It sounds rather queer that they are in the same article.
Yes.
It very often happens that way, so that the hearing will be inuous. That is the reason. It very often happens that the title is immediately before the last news, so that the reading is in continuation. That is the reason. "Ambassador Page assures England that we will send Ten Million Men." Then comes the other article. That is the reason.
After your statement of the policy of the paper to change, ld you think that that was an attempt to gracefully change over n pro-Germanism to pro-Americanism, such a headline as that?
Well, maybe it was at fault. That may be. But I want to say ething. We were so used to making these titles, pro-German s, for three years, sometimes invariably we did it without think- and we might make a pro-German title, without wanting to do nd you had no opportunity to correct it.
I show you also the issue of the 7th of September, 1917, when United States had been at war with Germany for five months and day, and I call your attention to an article on page 4, column 3, ded "Was soll das." That is the title of the heading of the arti- is it not?
Yes, sir, the title.
I guess, according to your statement of the paper's policy, that

the paper laid some importance on it, because it did not attempt
save space, as you have previously testified?
A. Yes, more important than the clipping.
Q. And it was given a double heading?
A. A double heading.
Q. We found that that was in your handwriting?
A. Yes, it was.
Q. And the original article, from which it was clipped, had a hea
ing "Suicides in Pershing's Army."
575 A. Yes.
Q. The title of the heading which you put on it was fir
"What does this mean." As you made it, I will ask you to state
the Jury what you meant by putting that kind of a heading on.
A. "What does this mean?" Out of twelve people four died
suicide. When you have got so many suicides, it indicates ma
treatment by the superiors. You have four out of twelve suicide
That is certainly terrific. It is interesting to the people to know wh
it was. Suicides among soldiers. A soldier has committed suicid
A soldier is in the best of health, and in the best of years, why shoul
he commit suicide? Then I thought, "Why is that? It needs to b
explained." I would say it means, "What does it mean?" W
have to know for sure.
Q. It needs to be explained?
A. Yes. Four out of twelve. It is surprising.
Q. You were conscious of the fact that the paper was being rea
by a German-speaking and a German-reading community?
A. Of course I knew that.
Q. And you felt that it was a fair comment on the article to ad
to the headline, "Many Suicides in Pershing's Army"?
A. Yes. I explained that.

Mr. Gray: Reported.
Mr. Roberts: Yes.

By Mr. Roberts:

Q. Many suicides in Pershing's army reported?
575½ A. Yes. I explained that. That is many.
Q. You had no idea that the headlines so written, or ha
you any idea that the headlines so written would be of any comfor
to the German reader?
A. No, not at all. I just read the clipping. Why should it b
of any comfort to the German reader?

Mr. Roberts: That is all.

576 Mr. Gray: I would like to call some character witnesses at
this time. These men, of course, are men who have no other
interest than the matter of giving testimony as to character. We
want to let them get away.
The Court: I think that is the proper way to do it.

Lieutenant JOHN F. STICKEL, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. You are a Lieutenant of Police of the City of Philadelphia?
A. Yes, sir.
Q. You have been in the department how long?
A. 25 years next January.
Q. Do you know Mr. Werner?
A. No, sir
Q. Do you know Mr. Darkow?
A. No, sir.
Q. Do you know Mr. Lemke?
A. No, sir.
Q. Do you know Mr. Vogel?
A. Yes, sir.
Q. Do you know Mr. Schaefer, do you not?
A. Yes, sir.
Q. How long have you known each of those men?
A. I have known those two men for twenty odd years.
Q. Your work has been around the district where the labor Lyceum is?
77 A. Yes.
Q. You came in contact with them that way?
A. Yes, sir. It is in my district.
Q. That is the way you came to know them?
A. Yes, sir.
Q. Do you know other people who know them?
A. Yes, sir, plenty of them.
Q. Plenty of them?
A. Yes, sir.
Q. Among those who know them, what are their respective reputations as law-abiding citizens? Good or bad?
A. I think there is none better.
Q. You don't think there is any better?
A. No, sir.

(No cross examination.)

WILLIAM H. FISCHER, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. Where do you live?
A. 1444 North 5th Street.
Q. What is your business?
A. Engineering.
Q. Do you have anything to do with the Tageblatt?
A. Yes, sir.
Q. What have you to do with the Tageblatt?

A. I belong to the Board of Directors.
578 Q. You are on the Board of Directors?
A. Yes, sir.
Q. Do you know Mr. Werner?
A. Yes.
Q. For how long?
A. For the last six or seven years.
Q. Do you know other people who are acquainted with him?
A. No, sir.
Q. You don't know any of his friends?
A. No, sir.

By the Court:

Q. Don't you know other people who also know Mr. Werner?
A. Yes, sir.

Mr. Gray: That is a question the law requires to be asked before a man may be asked about reputation. It is more easily misunderstood than any other question put to a witness, I think.

By Mr. Gray:

Q. Among those people who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. As far as I know, a very good one.
Q. Do you know Mr. Darkow?
A. Not very well. Only from the office in the Tageblatt.
Q. We will not ask you about him, then. Do you know Mr. Lemke?
A. Very well.
Q. How long have you known Mr. Lemke?
A. For the last ten years.
579 Q. How long?
A. Ten years.
Q. Do you know his friends, too?
A. Yes, sir.
Q. Among those who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. Very good.
Q. Do you know Mr. Vogel?
A. Yes, sir.
Q. How long have you known Mr. Vogel?
A. For the last twenty years.
Q. Do you know other people who know him?
A. Yes, sir.
Q. What is his reputation as a law-abiding citizen? Good or bad?
A. Very good.
Q. Do you know Mr. Schaefer?
A. Yes, sir.
Q. For how long?
A. Twenty years.

Do you know others who know him?
A. Yes, sir.
Q. What is his reputation as a law abiding citizen?
A. Very good.
Very good?
Yes, sir.

o cross-examination.)

RISTIAN SAUER, having been duly sworn, was examined and ed as follows:

By Mr. Gray:

Where do you live?
I live at 430 W. Dauphin Street.
What is your business?
I keep a barber shop.
Have you anything to do with the Tageblatt?
Well, not direct. I am solicitor for ads., advertisements.
You are a solicitor for advertisements?
Yes, sir.
Have you come in contact with Mr. Werner?
Well, I know Mr. Werner since 1883.
A matter of thirty-five years or more?
Yes.
Do you know other people who know him?
I know a great many of them.
Q. Among those who know him, what is his reputation as a law abiding citizen? Good or bad?
A. Very good.
Do you know Dr. Darkow?
Well, I don't know Dr. Darkow, only I saw him in the place.
Do you know Mr. Lemke?
Yes, sir.
How long have you known Mr. Lemke?
I know Mr. Lemke since 1885.
Since 1885?
Yes.
And do you know other people who know him?
Yes, sir.
Among those who know him, what is his reputation as a law ng citizen? Good or bad?
Good. I know he is a good citizen. A good man.
Do you know Mr. Vogel?
Yes, sir.
How long have you known him?
Well, about fifteen years.
Do you know others who know him?
Yes, sir.

Q. What is his reputation as a law abiding citizen? Good or bad?
A. Very good.
Q. Do you know Mr. Schaefer?
582 A. I know him for a good many years, too.
Q. How long?
A. Well, I cannot say exactly. About ten years.
Q. Do you know other people who know him?
A. Yes, sir.
Q. What is his reputation as a law abiding citizen?
A. As much as I know, a good one.

(No cross-examination.)

JOHN EPLER, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. Do you know Mr. Werner?
A. Yes, sir.
Q. What is your business?
A. Mechanical Engineer.
Q. Have you anything to do with the Tageblatt?
A. Yes.
Q. What is your connection with the Tageblatt?
A. I have been director years ago, and also I am one of the founders.
Q. You were one of the founders of it?
A. Yes.
Q. And you were a director years ago?
583 A. Yes.
Q. How long have you known Mr. Werner?
A. Thirty-nine years.
Q. Do you know other people who know him?
A. Yes.
Q. Among those who know him, what is his reputation as a law abiding citizen? Good or bad?
A. Very good.
Q. Very good?
A. Yes.
Q. Do you know Dr. Darkow?
A. Yes. Only superficially.
Q. We will not ask you about him, then. Do you know Mr. Lemke?
A. Very well.
Q. How long have you known him?
A. About twenty years.
Q. Do you know other people who know him?
A. Oh, yes.
Q. What is his reputation as a law abiding citizen. Good or bad?
A. Very good.

Q. And do you know Mr. Vogel?
A. Yes.
Q. For how long?
A. I guess for about ten or twelve years.
Q. Do you know other people who know him?
A. Yes.
Q. Among those who know him, what is his reputation as a law abiding citizen? Good or bad?
A. Very good.
Q. Do you know Mr. Schaefer?
A. Yes.
Q. For how long?
A. About the same. Ten or twelve years.
Q. Do you know other people who know him?
A. Yes, sir.
Q. What is his reputation as a law abiding citizen?
A. Very good.

(No cross-examination.)

BLUMER EMIL, having been duly sworn, was examined and testi-ed as follows:

By Mr. Gray:

Q. Where do you live?
A. 419 Noble Street.
Q. Do you know Mr. Werner?
A. Yes, sir.
Q. How long have you known him?
A. I have known him about ten years.
Q. Do you know other people who know him? Do you know me of his friends?
A. I know Mr. Schaefer for about twenty years and I know Mr. ogel for about the same and I know Mr. Lemke.
Q. Do you know other people that also know them? Some of their mutual friends? Do you know some people who know them?
A. Yes.
Q. Among those who know him, what is the reputation of Mr. erner as a law abiding citizen? Good or bad?
A. Just the best reputation, what I know. Just the best reputa-on.
Q. The best reputation?
A. Yes.
Q. Do you know Dr. Darkow?
A. No, sir.
Q. You have said you know Mr. Lemke?
A. Yes.
Q. How long have you known Mr. Lemke?
A. About ten years.

Q. Do you know other people who know him?
A. Yes, sir.
Q. What is his reputation as a law abiding citizen?
A. The best reputation. Just the same.
Q. And Mr. Schaefer, you have known him, I think you sai
twenty years?
A. Yes, sir.
Q. Do you know other people who know him?
A. Yes, sir.
Q. What is his reputation as a law abiding citizen?
A. The best reputation.
Q. And you know Mr. Vogel the same length of time as you kno
the others?
586 A. Yes, sir.
Q. What is his reputation as a law abiding citizen?
A. The best reputation.

(No cross-examination.)

JOHN DEMACEDO, having been duly sworn, was examined and tes
tified as follows:

By Mr. Gray:

Q. Where do you reside?
A. 5340 Magnolia Avenue, Germantown.
Q. What is your business in this city?
A. I am Portuguese consul in Philadelphia.
Q. Do you know Mr. Werner?
A. No.
Q. Do you know Dr. Darkow?
A. Yes.
Q. How long have you known Dr. Darkow?
A. Twenty years.
Q. Do you know other people who know him?
A. Yes.
Q. Among those who know him, what is his reputation as a law
abiding citizen? Good or bad?
A. Very good.
Q. Very good?
A. Very good.
Q. Do you know any of the other gentlemen?
A. No, I do not.
587 Q. Dr. Darkow is the only one you know?
A. He is the only one I know.

(No cross-examination.)

HERMAN BAIR, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. Where do you live?
A. Hatfield Township, Montgomery County.
Q. What is your business?
A. Farmer.
Q. Do you know Mr. Werner?
A. Yes, sir.
Q. Are you any relation to him?
A. Yes, sir.
Q. What relation?
A. He is my brother-in-law.
Q. How long have you known him?
A. About twenty-four years.
Q. Do you know other people who know him?
A. Yes.
Q. Among those who know him, what is his reputation as a law-abiding citizen? Good or bad?
A. Very good.
Q. Do you know any of the other of these gentlemen?
A. No, sir.
Q. You do not know any of the others?
588 A. No, sir.

Mr. Roberts: I would like to cross-examine this witness on another matter at this time. It will save bringing him back.
Mr. Gray: All right.

Cross-examined.

By Mr. Roberts:

Q. Mr. Bair, during the summer of 1917 how often was Mr. Werner at your place?
A. I cannot recall that exactly.
Q. Let me put it in this way. Was he there at any time for more than a day?
A. No, sir.
Q. You mean he would come there for a day, and then go back?
A. Yes, sir.

Redirect examination.

By Mr. Gray:

Q. He would go back the same day, you mean?
A. Yes.
Q. Mr. Roberts was talking to you about last summer. Not this summer just passed, but the summer of 1917. Did he stay over night there at any time?
A. No, sir.

589 LOUIS WITTENBERG, having been duly sworn, was examined and testifies as follows:

By Mr. Gray:

Q. Where do you live?
A. 1727 Memorial avenue.
Q. What is your business?
A. I am not in business now. Retired.
Q. Have you anything to do with the Tageblatt?
A. No.
Q. Do you know Mr. Werner?
A. Yes, sir.
Q. How long have you known him?
A. As long as he is the editor of the Tageblatt. About thirty-eight or thirty-nine years.
Q. About thirty-eight or thirty-nine years?
A. Yes.
Q. Do you know other people who know him?
A. Yes, plenty of them.
Q. Plenty of them?
A. Yes, sir.
Q. Among those who know him, what is his requtation as a law-abiding citizen? Good or bad?
A. Very good.
Q. Do you know Dr. Darkow?
A. No, not much.
Q. Do you know any of the other gentlemen?
A. Mr. Lemke, Mr. Vogel and Mr. Schaefer.
590 Q. You know the other three?
A. Yes.
Q. How long have you known Mr. Lemke?
A. About fifteen years.
Q. Do you know other people who know him?
A. Yes.
Q. What is his reputation as a law-abiding citizen?
A. Very good.
Q. How long have you known Mr. Schaefer?
A. Oh, about ten or fifteen years.
Q. Do you know other people who know him?
A. Oh, yes.
Q. What is his reputation as a law abiding citizen? Good or bad?
A. Very good.
Q. How long have you known Mr. Vogel?
A. About the same time.
Q. And the same time as you have known Mr. Schaefer?
A. Yes.
Q. Do you know other people who know him?
A. Yes.
Q. Among those who know him what is his reputation as a law-abiding citizen?
A. Very good.

EMIL SIEVERS, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. Where do you live?
A. 713 North Seventh Street.
Q. What is your business?
A. Carpenter.
Q. Have you anything to do with the Tageblatt?
A. Not direct. I am a boss carpenter. I do carpenter work ere.
Q. You are a boss carpenter and you do carpenter work?
A. Yes. I have done the carpenter work there about twenty-e years.
Q. For twenty-five years?
A. Yes.
Q. Do you know Mr. Werner?
A. Yes.
Q. How long have you known him?
A. I know him thirty years.
Q. Do you know other people who know him?
A. Yes, sir.
Q. What is his reputation as a law abiding citizen? Good or bad?
A. Good. A very good reputation.
Q. Do you know Dr. Darkow?
A. I know him from the office, the Tageblatt office.
Q. Do you know him outside the office at all?
A. No, only when I would meet him on the street.
Q. Do you know his friends?
A. I don't know much friends of him.
Q. We will not ask you about him, then. Do you know Mr. emke?
A. Yes.
Q. How long have you known Mr. Lemke?
A. Thirty-five years.
Q. Do you know other people who know him?
A. Yes, sir.
Q. What is his reputation as a law abiding citizen? Good or bad?
A. Very good reputation.
Q. Do you know Mr. Vogel?
A. Yes.
Q. How long have you known him?
A. Since thirty-two years when he came into this city.
Q. Do you know other people who know him?
A. Yes, sir.
Q. What is his reputation as a law abiding citizen? Good or bad?
A. All good. All good.
Q. Mr. Schaefer. How long have you known him?
A. I know him since about twenty years.
Q. Do you know other people who know him?
A. Yes, sir.

Q. What is his reputation as a law abiding citizen?
A. Very good reputation.

593 (No cross-examination.)

Dr. DUDLEY W. LANE; having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. I want to ask you about Mr. Werner. You were Mr. Werner's physician?
A. Yes.
Q. You are a practicing physician?
A. For over twenty years, yes.
Q. Do you know anything about him say in the last two or three years?
A. The last two years, yes.
Q. Just one question. During the last several years has his condition of health been good or bad?
A. I had not seen him for sometime except when I came to see the family. I did not examine him, but when I did see him his condition was not good. I saw him in May 1916. That was the last time. He had an attack of acute indigestion, and he was in a very nervous condition at the time.
Q. Was he a man that was in a failing condition of health at that time?
A. I could not say for I had not seen him for sometime before that, so I could not make a comparison.
Q. You could not make a comparison?
A. No, sir.

(No cross-examination.)

594 DAVID FURSTEKBERG, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. Where do you reside?
A. 2315 North Broad Street.
Q. What is your business or profession?
A. Gentleman.
Q. You mean you have no business?
A. No, business, no, sir.
Q. Are you connected with the Tageblatt in any way?
A. No, sir in no way at all.
Q. Do you know Mr. Werner?
A. No.
Q. Do you know Dr. Darkow?
A. I do.
Q. How long have you known him?
A. Well, more than twenty-five years.

. Do you know other people who know him?
. Yes, sir.
. Among those who know him, what is his reputation as a law ing citizen? Good or bad?
. A very good one.
. Do you know any of the other men?
. No.

No cross-examination.)

HENRY G. WELBRICK, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

. Where do you reside?
. 6000 York Road.
. What is your business?
. No business. Retired.
. Have you anything to do with the Tageblatt?
. No, sir.
. Do you know Mr. Werner?
. Mr. Werner, yes.
..How long?
. About twenty years.
. Do you know other people who know him?
. No.
. Nobody during those twenty years?
. No.
. You mean you never knew anybody that knew him during the le twenty years?
. No. I know Mr. Werner.
. But you don't know anybody else who also knows Mr. Werner?
. Probably there are lots of them. I could not tell you that. I 't know. I have only known Mr. Werner.
. Can you say you know anybody that Mr. Werner knows also?

A. No, none in particular.

Q. Not in particular. All right. Do you know any of the other gentlemen?

. I know Mr. Lemke.
. How long have you known Mr. Lemke?
. About thirty years.
. Do you know other people who know Mr. Lemke?
. Oh, yes, I know them, but I could not name them.

The Court: I think he misunderstands your question.
Mr. Gray: I know he does. It is the easiest misunderstood ques- there is.

By the Court:

. You say you know Mr. Werner?
. Yes.

Q. And you know Mr. Lemke?
A. Yes.
Q. There are other people besides you who know them?
A. Oh, yes. No doubt, your Honor, but I could not name them.
Q. We are not asking you to name them. You know those other people?
A. Yes. Certainly. I understand, now, your Honor.

By Mr. Gray:

Q. What is Mr. Werner's reputation as a law abiding citizen? Good or bad?
A. As far as I know, A-No. 1.
Q. What is Dr. Darkow's reputation?
A. I don't know him.
Q. You don't know?
597 A. No, sir.
Q. Do you know any of the other defendants?
A. Mr. Lemke.
Q. You said you did not know Dr. Darkow. What is Mr. Lemke's reputation as a law-abiding citizen? Good or bad?
A. As far as I know, A-No. 1.
Q. Do you know Mr. Schaefer or Mr. Vogel?
A. I do not.
Q. You don't know them?
A. No, sir.

(No cross-examination.)

598 HERMAN LEMKE, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. How old are you?
A. 59 years.
Q. Where were you born?
A. I was born in Silesia, Germany.
Q. In Germany?
A. Yes, sir.
Q. When did you come to this country?
A. In 1883.
Q. 1883?
A. Yes, sir.
Q. That is when you were about twenty-four years of age?
A. Twenty-three years of age.
Q. Were you married when you came here?
A. No, sir.
Q. Did you come here alone?
A. Yes, sir.
Q. What made you come to America?
A. Well, I had a brother here, and before this I had decided to

to America, as soon as I am well enough, on account of my uncle.
Q. You had an uncle here?
A. Yes.
Q. In Philadelphia?
A. No, in New York.
Q. So that when you came here did you come to your
cle in New York?
A. My uncle was dead then.
Q. He was dead then?
A. Yes.
Q. Where did you stay? In New York or in Philadelphia when
u came?
A. I came to Philadelphia to my brother.
Q. You came to your brother in Philadelphia?
A. Yes, sir.
Q. And what did you do after you came here to make a living?
A. I tried to make a living.
Q. What did you do? What kind of work?
A. I tried to hunt a trade.
Q. What trade?
A. Oh, first I went to a wool mill to break in there, to try to
arn anything, because I could not get any position here with my
ade.
Q. When did you go with the Tageblatt?
A. In 1901.
Q. In 1901?
A. Yes.
Q. Tell the jury in a general way what you did between 1883 and
901,—in a business way. What did you do?
A. Well, I worked in several places, in Thomas Dolan's
00 mill and I worked in Gotschalt's for about four or five years.
Q. You worked in mills?
A. Several mills.
Q. As a weaver, you mean?
A. Yes, sir. Then I started in the grocery business once and
ave it up again.
Q. When you went with the Tageblatt what did you go there
o do? What character of work?
A. I started there as a bookkeeper.
Q. As a bookkeeper?
A. Yes, sir.
Q. How long did you remain a bookkeeper?
A. Well, about nine or ten years. I cannot say exactly.
Q. Then what position did you get?
A. Well, on account of sickness of the business manager I had
o take charge of the business.
Q. Who was the business manager then?
A. Mr. Hecker.
Q. Nobody that has anything to do with the paper now?
A. No, he is dead.
Q. Have you been business manager ever since?

A. Yes.
Q. Are you married?
A. Yes, sir.
Q. How much of a family have you?
A. Three boys and my wife.
601 Q. How old are they?
A. One is 28, one is 18 and one is 12.
Q. When you went with the Philadelphia Tageblatt what sala did you get?
A. $10 a week.
Q. Are you with them yet? You are with them now?
A. With the Tageblatt?
Q. Yes.
A. Yes.
Q. Answer. I know you know, but the jury do not know, and want them to know.
A. Oh.
Q. What salary are you getting now?
A. Now I get $30.
Q. Is that the highest you ever got?
A. Yes. I had $25.
Q. What were you getting in 1917, when you were arrested?
A. $25.
Q. What is your work in connection with the Tageblatt? Wou you explain to the jury what you do?
A. I have to attend to the advertising line, to the financial pa of the business.
Q. Yes.
A. Collecting bills, paying out and doing the buying and so on
Q. Did you have anything whatever to do with either th
602 news or editorial articles that appeared in the paper?
A. No, sir.
Q. At any time?
A. No. I do not work in the editorial room.
Q. Whether you work in the editorial room or not, did you eve have or were you ever permitted to have any say as to the publica tion of either any news articles or any editorials?
A. No news articles, except when they ran short of men, I use to help them out for a concert, or so, and make a report.
Q. To report a concert?
A. Yes. That was only an exception, when they ran short o men.
Q. What, if anything, has your paper done, or the Philadelphia Tageblatt done, in the matter of helping the United States Govern ment in its war with Germany?
A. Well, we did all we could do for the Government. I got a Thrift Stamp agency from Washington. I worked for the Red Cross. I got an agency, and I worked for the Liberty Loan as good as I could, especially in the Third Liberty Loan. I made it my special business, me and another man.

By Mr. Roberts:

. The Third?
. The Third, yes. For the Second also.

By Mr. Gray:

. What did your newspaper raise in its campaign for the Third rty Loan?

Mr. Roberts: I object.

The Court: That, I understand, would be subsequent to the indictment.

Ir. Roberts: Long subsequent, yes, sir.

Ir. Gray: There is no doubt about that.

he Court: I do not think it is evidence.

Ir. Gray: Your Honor will rule on it.

he Court: The objection is sustained.

Exception noted for the defendants, individually and jointly, lirection of the court.)

Cross-examined.

By Mr. Roberts:

Q. Mr. Lemke, you know all the subscribers to this paper?
A. Not exactly, no.
Q. At this time in 1917?
A. Oh.
Q. You had charge of the subcriptions, did you?
A. No.
Q. Who did?
A. That was the circulation manager.
Q. Who was that?
A. At that time—we changed several times.
Q. Who were they then?
A. Mr. Behren had it in 1917.
Q. Anybody else?
A. Yes. Mr. Herbert used to help out in it.

Q. Mr. Herbert helped, too?

A. I guess that was all. Then we changed men.

Q. had you knowledge that your circulation was amongst rman-Americans, so-called, people of German birth in this City? d you such knowledge?
A. Yes, it was.
Q. You know the paper was actually circulated among the Ger- n people, the German speaking people?
A. Yes.
Q. No doubt about that?
A. Yes.
Q. You had that knowledge in 1917?
A. I cannot say exactly.

Q. And your advertisements were practically, except the theat and things like Castoria, and those usual advertisements, and t Bell Telephone, from German speaking people?

A. No, sir.

Q. Well, how about Wobofaten?

A. That is German.

Q. How about Muehler?

A. Sure.

Q. How about Feldman?

A. He is not German. They don't speak German.

Q. How about Katz?

A. Katz may be German.

Q. How about Fischer, and how about Maltz?

A. They are German.

Q. How about Halthaus?

605 A. They are not German.

Q. How about Stuts and Andreas?

A. That is the Clothier. He was here yesterday.

Q. He was the man that was on the stand yesterday?

A. Yes.

Q. Smith and Holthaus?

A. They are not German. Smith and Holthaus is an Engli firm.

Q. How about Stuts and Nittinger?

A. I don't know.

Q. Andreas?

A. That is the Clothier that was here yesterday.

Q. Schuhwaaren?

A. I don't know whether they are German or not. He is not German. Not that I know of.

Q. Did you know about the policy of the paper prior to the breal ing out of the war?

A. Yes, sir.

Q. What was its policy prior to the breaking out of the America and German war? Pro-English, Pro-French, or Pro-German?

A. It was not Pro-German.

Q. It was not Pro-German?

A. Not in the way you might think. It was with the Germa people, but not with the German Kaiser. It always has been op posed to the German Government.

Q. What about the policy of the paper after America entered th war?

A. Well, to sustain the Government.

606 Q. To sustain the Government. I show you a book, whic I believe was in your possession as an officer of the Com pany, and I show you an entry on page 127, the book being Govern ment's Exhibit No. 89, T. R. P. Is that entry in your handwriting?

A. Yes, sir.

Q. See if I translate it correctly. That was a report to the Di rectors, was it not?

A. It was not a report to the Directors.

Q. What was it?
A. That is only a memorandum book.
Q. Why did you make that particular memorandum that I have inted out to you?
A. I made several of them.
Q. I am asking you about that one, now. We will get to the hers after a bit. Why did you make that one?
A. I will have to see why. Well, that was——
Q. I am asking you why you made it. I am not asking you what says.
A. I don't remember why I made it.
Q. You don't know that. Did you communicate what was in that emorandum to anybody at that time, or about that time?
A. I cannot tell. Maybe I told some of the Board of Directors. aybe not.
Q. Maybe you told some of the Board of Directors and maybe not. ow, suppose you take these two pages, 126 and 127. Just start at the top of page 126, where I believe the date appears. Where 07 did that start in April?
A. April 23rd?
Q. April 23rd?
A. Yes.
Q. All right. Give me what appears on April 23rd on that page, 26, so that the jury will see what the page is about.

Mr. Gray: What is that book, any how?
Mr. Roberts: The book he says he kept for himself.
The Witness: My memorandum book.

By Mr. Roberts:

Q. April 23rd. Go on.
A. "Meeting of the Board of Directors, April 23rd."
Q. Meeting of the Board of Directors, April 23rd?
A. Yes.
Q. Go on. Who were present?
A. "Bernard Walroth, presiding, and Peter Schaefer came in ter. Secretary, William Conrad. Present: Schaefer, Vogel, Conad, Bernard Walroth, Bauch, Munk, Fischer, Gruff, Schaal and Bauer. Report for March."
Q. Whose report? It does not say, but do you know?
A. I reported generally.
Q. You reported. Go on. "Report for March."
A. "$5.00."
Q. What does that mean?
A. It mean- that they asked for an ad in the program. We decided to give them $5.00. "North Penn Bank, for $300 per 08 year. If this bank has good results, it will be kept, but so far nobody had made any deposits."
Q. Yes.
A. "And the Gazette deposited there $10,000."

Q. You may explain that to the jury, if you like. It is not important. I want to get the fact of what this report is.
A. I had an advertisement in view, as often it happened.
Q. You had some advertisement in view?
A. Yes, with the North Penn Bank, and I could have had it if they got results.
Q. You could have got the North Penn Bank's advertisement if the paper brought results?
A. They said they did not get enough results, and they told us that the Gazette deposited $10,000 there. That is about the whole thing. We could not do that. "Personal changes. The Bookkeeper John Landberg"——
Q. Then, it goes on with business matters, does it not?
A. All business, yes, sir.
Q. It goes right along, does it not?
A. Yes.
Q. With different headings?
A. Yes.
Q. Come down to the paragraph that is just below the middle of the page 127, and read that.
A. "The war situation is still pressing, though the people get used to it."
Q. I have it translated, "But we have become accustomed to it."
609 A. All right. You might be right. "The Germans are satisfied."
Q. "Satisfied?"
A. Oh, no. "The Germans are not satisfied with the Gazette."
Q. "With the stand of the Gazette," I have it.
A. Yes. "With the stand of the Gazette."
Q. "And we are"——
A. "And we are gaining subscribers."
Q. I read it, "We are doing good increase with subscribers"?
A. Yes, sir.
Q. Go on?
A. "The opportunity is good"——
Q. "And we should canvass"?
A. Yes.

Mr. Gray: This is long before the declaration of war.
Mr. Roberts: No it is not. This is April 23rd.
Mr. Gray: I thought you said March.
Mr. Roberts: No, April 23rd. You have gone into that period. You have offered the newspaper publications.
Mr. Gray: You may cross examine on any subject which you want to ask any of the defendants about.
Mr. Roberts: Thank you.

By Mr. Roberts:

Q. On page 129, Mr. Lemke, what appears there? The same report. On 128 and 129 is there another report there?

. Yes, remarks.
. Remarks?
A. Yes, sir.
Q. Was there a Directors' meeting then?
A. May 28th.
. Who were present?
. Not stated.
. It is not stated who were present?
. No, sir.
. Did you make any report about the Department of Justice to Directors at that time?
. I may have.
. Look at what your notes say.
. Well, the Department of Justice was into our business and we e it to Mr. Nelson. We had nothing to do with it.
. Mr. Nelson, your attorney?
. Yes.
. You would have nothing to do with it, and you say there that y were referred to Mr. Nelson—you turned it over to Mr. Nelson?
. Yes, sir.
. Suppose you turn to page 131, and will you tell me what meet- that is?
. That is June 25.
. June 25?
. Yes.
. Who were present there?
. Tillinger.
Q. He presided, did he not? It says "Tillinger presiding."
1 A. Yes, sir.
Q. Who else?
. I don't know who was there.
. You have not a record of who else was there?
. No, I did not mark that down.
. You did not mark that down?
. No.
. There is a long business report there, isn't there?
. Yes, sir.
. And it goes down to the second page that I have shown you, ich I think is page 131, about the middle of the page, where it gins about the Tageblatt's growth. Do you see where that is?
. Yes.
. I have that translation, "The Tageblatt is also growing very atifyingly. This is principably to be ascribed to our powerful and." Somebody said yesterday "strong stand."
. "Powerful" is entirely wrong.
. What would you say? What word?
. Firm stand.
. Very good. "Many Germans are not at all satisfied with the and of the other German newspapers." That is right, is it?
. Yes.

Q. The next paragraph: "The Department of Justice ha
peatedly visited us. We were taken by surprise, but as we are
nothing contrary to law, no action was undertaken against us."
is right, is it?

611½ A. Yes.

Q. Now, did you know the policy of the Tageblatt
you wrote those two different reports that I have called your
tion to?

A. Well, about, yes.

612 Q. What was the policy of the Tageblatt to which yo
ferred, or the stand of the Tageblatt to which you refe

A. To the foregoing years.

Q. You were referring to the stand of the foregoing years?

A. That was it. What I said in the beginning of the year,
wanted to buy machinery, and some were afraid in the presen
uation, that the German papers might be suppressed, and I
them "It don't look that way, because we are doing everythin
the Government, whatever they want, we do our duty."

Q. I want to be perfectly fair to you, Mr. Lemke. Do you
that as an explanation to this jury of the language I have just
you?

A. I could not catch that.

Q. I do not want to be unfair to you. I want to give you a
chance to explain to this jury what is there meant. If you do
understand me, you make it clear to me that you do not. You
the directors then, as I understand it, that the Germans in Phil
phia were very much satisfied with the firm stand that the Tage
was then taking. Is that right?

A. Yes.

Q. What firm stand was the Tageblatt then taking? A firm s
about what?

A. About the labor movement first. That is the main thin
the paper.

Q. About the labor movement?

613 A. Yes, and we got several people who told us how
Tageblatt goes for the labor movement in this way. Th
why they were satisfied with it, and that meant a good many of
subscribers are in the butcher business and so on.

Q. Did the Department of Justice come to you about your
stand on the labor movement?

A. No, sir.

Mr. Roberts: I think that is all.

Redirect examination.

By Mr. Gray:

Q. What the Department of Justice did was to come there to
information as to who were connected with the paper and their
zenship. Isn't that so?

A. Yes, sir.

Q. Who came there from the Department of Justice?
A. First was a man there by the name of Spates who came to see the editorials.
Q. And then who was the next?
A. Then came Spates. Another man came along the same evening. I could not just say, and Mr. Hajek.
Q. Did anybody else come after that, until they came there with the search warrant, I mean.
A. That is the end. Since that time I did not see anybody, except they called me once over about something, I don't know what it was, I did not know, so I told them at the time to see Mr. Werner or Mr. Nelson.

614 PAUL VOGEL, having been duly sworn, was examined and testified as follows:

By Mr. Gray:

Q. How old are you?
A. Forty-nine years old.
Q. Where were you born?
A. Germany.
Q. Whereabouts in Germany?
A. In the southern part of Germany.
Q. When did you come to this country?
A. 1886.
Q. When you were about fourteen?
A. Seventeen years old when I came to this country.
Q. How old are you now?
A. Forty-nine.
Q. Are you married?
A. Yes, sir.
Q. You live with your family, of course?
A. Yes, sir.
Q. What does your family consist of?
A. I got a wife and four daughters.
Q. How long have you been in Philadelphia? Ever since you came to this country?
A. With the exception of one year I left Philadelphia in 1887, and I was in Newark, New Jersey until 1888. Then I came back to Philadelphia and I am here ever since.
Q. When you came back to Philadelphia you worked?
A. Yes, sir.
615 Q. At what business?
A. Brewer.
Q. Brewer?
A. Brewery worker.
Q. Have you been doing that class of work constantly ever since?
A. Up until 1906.
Q. Up until 1906?
A. Yes, sir.

Q. And what did you do then in 1906?
A. In 1906 my organization elected me as secretary of the org
zation.
Q. What was the organization you refer to?
A. Brewery Workers' Union No. 5.
Q. In and around Philadelphia?
A. Yes, sir, Philadelphia and vicinity.
Q. You had been a member of the organization, which was a l
organization before that?
A. Yes, I had been a member.
Q. In 1906 they elected you secretary?
A. Yes, sir.
Q. Then did you give up your other work, your work as a brew
A. I had to give it up. I had to give it up.
Q. In other words, your work as secretary of the Union consu
all your time?
A. Yes, sir.
616 Q. As that secretary how much salary did you get?
A. At the beginning twenty-two dollars.
Q. A week?
A. Yes.
Q. What do you get now?
A. Thirty dollars and expenses.
Q. Are you still secretary?
A. Yes, sir.
Q. You have been secretary for twelve years?
A. Yes.
Q. And that consumes most of your time or practically all of y
time?
A. Yes. I have to.
Q. When did you first have anything to do with the Tageb
and how did you come to have anything to do with it?
A. It was in 1911, when the joint executive board decided to
some shares in the Philadelphia Tageblatt. They bought eight
shares, and I am a member of the Joint Executive Board, and I
peared there as the representative, with one share.
Q. They bought forty-five dollar's worth of stock?
A. Yes, sir.
Q. And you were sent there to represent the Executive Board,
given a share of stock, so that you would be entitled to repres
them?
A. That is correct.
Q. Did you become a director of the business at that time?
A. I did.
617 Q. What did you become?
A. Simply a member of the Board of Directors.
Q. That was in 1911?
A. Yes, sir. I have got to explain this.
Q. Go ahead.
A. In 1911 the chief editor of the Tageblatt came to us Brew
Workers, and he explained to us that the radical Socialists tried

take hold of his paper, and he asked the Brewery Workers to prevent that, by buying some shares, and he is afraid that the Tageblatt will become a radical Socialist paper, and, therefore, we decided to buy 18 shares and be represented there, and at this meeting we were strong, because we had eighteen of them, and the rest of them were about ten, and when it came to elect the Board of Directors, I was elected.

Q. You are now treasurer, aren't you?
A. Yes, sir.
Q. When did you become treasurer?
A. In 1911.

Mr. Roberts: Treasurer of what?
Mr. Gray: Of this Philadelphia Tageblatt Association.
Mr. Roberts: He is treasurer now.
Mr. Gray: Yes.

The Witness: The Board of Directors elected me as treasurer.

By Mr. Gray:

Q. You were elected a member of the Board, and then the
618 Board elected you treasurer, and you have been treasurer ever since?
A. Yes, sir.
Q. How often do you go near the Tageblatt office?
A. Very seldom, only when I have an article to fetch down there, or a Union Report, something like that. I never went down there, only on account of financial business, something like that.
Q. How often do you go? Once a month or once a week?
A. Maybe once a month. Sometimes I send it down.
Q. Do you have anything to do with the publishing of the paper?
A. None whatever.
Q. Do they let you have any say about what goes into the paper?
A. None whatever.
Q. Did you ever try to have any say?
A. No, sir.
Q. Were you ever called upon to keep any money?
A. Yes, when there was some money to keep, but most of the time there was no money to keep. Up until 1914 I never handled a penny for the Philadelphia Tageblatt.
Q. You were three years treasurer, without having a cent in the treasury?
A. Yes, and then in office 1914 the Brewery Workers decided to take a first mortgage on the Tageblatt Building. At that time I was instructed to see to it that the interest came to be paid every six months on the first mortgage. Therefore I arranged with Mr. Lemke that he should come up to my office in the Labor Ly-
619 ceum at 6th and Brown Streets every Friday afternoon at two o'clock. When he came there, if the income was higher than the expenses, he handed me a check, and I deposited the money in the bank at 6th and Spring Garden Streets. If the expenses

were higher than the income, I handed him a check, so that they were able to cover the weekly expenses.

Q. That is the only part you have ever taken in the Tageblatt?

A. That is all. That is my whole connection with the Philadelphia Tageblatt. Nothing else.

Q. You are a citizen now, are you?

A. Yes, sir, for many years.

Q. How long have you been a citizen of the United States?

A. Over 18 years.

Q. Over 18 years?

A. Yes.

Q. Did you read the Tageblatt?

A. Generally the labor news. We always advertised in the Tageblatt, and on account of getting pamphlets printed there, it was very much cheaper for us to advertise in the Philadelphia Tageblatt and I always looked the Tageblatt over for our advertisement, and at the same time I looked the labor news over of the different other organizations, but I never bothered my head about it at all, about anything like that.

Cross-examined.

By Mr. Roberts:

Q. How long have you taken the Tageblatt, the paper?

A. The paper?

Q. The paper.

620 A. Oh, well, I know that paper since I came to this country.

Q. Have you taken it since you came to this country?

A. Yes. I am a subscriber for the Tageblatt.

Q. Sure. How long before you were connected with it?

A. Since 1886.

Q. Since 1886?

A. Yes.

Q. And long before you were connected with it you read it?

A. Yes.

Q. And you bought it because you wanted a German newspaper?

A. Yes, sir.

Q. And after you became connected with it, your name, Paul Vogel, was on the heading of the editorial page. "Paul Vogel, Treasurer"?

A. Yes, sir.

Q. And you knew your name was appearing there?

A. I knew that my name was in there, yes, sir.

Mr. Gray: In compliance with the law. It requires that it be there.

Mr. Roberts: Certainly. I have no objection to its being there. I am not complaining about that.

By Mr. Roberts:

low, you say you never read this paper?
ure I did.
he editorials or the news?
A. I never bothered my head. My time is—I am always a busy man. I have got lots of work for my organization and some other affairs, and I never read the paper through rough. I read some of the articles sometimes, but I never e paper through and through.
You never read the paper through and through. If the paper anged its policy on labor matters you would have known it, 'n't you?
If it was labor matters, yes, I would have known it.
Did you know that the paper did change its policy with re- foreign news at the outbreak of the European War?
I never noticed that.
You never noticed that?
No, sir.
What did you understand Mr. Lemke's report to you to mean, e Germans were dissatisfied with the stand of the Gazette?
The way he explained it to us in the Board of Directors,—he that we get new subscribers and that the Gazette lose some ibers, and they are coming over to read the Tageblatt.
Did he say why?
He did not say why. He did not give us any explanation.
He did not say what is in this memorandum here, that the ans are dissatisfied with the stand of the Gazette, did he?
I cannot say that he said it in my presence.
You cannot remember that he said it in your presence. I will read it to you. "The Germans are very dissatisfied with the stand of the Gazette." April 23rd.
A. I want to explain this.
Go ahead and explain it.
Very often it happened that there was a Board of Directors ing, and the same meeting night I had two or three other shop ings in the other room, of Brewers, and they had the Board of ctors in one room and I had the shop meeting in the other room, I could not go over there until the shop meeting was over. That often happened.
. A moment ago you said you did not remember hearing this.
. I do.
. Then, you were there.
. I spoke——
. You were not at the shop meeting, then, at that time, were ?
. I spoke about it, sure.
. Didn't he speak about the Tageblatt getting subscribers of the ette? You were not at the shop meeting when that was stated, use you told me a minute ago you remembered it.
.. I remember that he made that report.

Q. You were there?
A. All right. I was there.
Q. Don't you remember speaking about the stand of the Gazette
A. I do not.
Q. Don't you remember what he has just testified to, that he ex-
plained that the Gazette stand was not satisfactory on labo-
623 matters?
A. I stated before that he stated he is going to get a whol
lot of new subscribers on account of giving up the Gazette.
Q. On account of what?
A. On account of giving up the Gazettte.
Q. Did he give any reason?
A. No, not that I know of.
Q. Do you remember his reporting the Department of Justice
investigation, that an agent of the Department of Justice had bee
down there to visit them?
A. I remember that, yes.
Q. You do remember that?
A. Yes.
Q. And as they were doing nothing illegal, they had nothing t
fear? Do you remember that?
A. Yes. That was the same meeting.
Q. No, it was not. That is the meeting of June 25. You wer
present and heard that, didn't you? Did you or did you not?
A. Let me tell you.
Q. You can go ahead and tell me anything you want.
A. I never took such an interest in those meetings. If I wa
there I took part in the financial matters, and I never listened to th
other affairs.
Q. Were you present at the meeting where Mr. Lemke reported
that the Department of Justice's agent had come and visited
624 you and taken the place by surprise, but that "as we are
doing nothing illegal, nothing was going to happen"?
A. I cannot remember.
Q. Why did you remember that five minutes ago and you cannot
remember it now?
A. I cannot remember all that Mr. Lemke reported. He reported
a whole lot of stuff, and I did not listen to it all.

PETER SCHAEFER, having been duly sworn, was examined and
testified as follows:

By Mr. Gray:

Q. How old are you?
A. 52 years of age.
Q. Where were you born?
A. I was born in Germany.
Q. What part of Germany?
A. The northern part of Germany.
Q. Where?

. In what they call Bavaria.
. When did you come to this country?
. In 1883.
. How old were you then?
. 17 years old.
. And have you become naturalized?
. Yes, I became naturalized five years and two days after I came to this country, in 1888.

Q. And what business did you engage in or what work did you do when you came here?

A. When I first came here I worked as a baker, then I started ving a wagon, and drove a street car, and some years ago, about nty-six or twenty-seven years ago, I started to drive a beer wagon.
Q. That was some time about 1892?
A. Something like that.
Q. And for how long did you drive a beer wagon?
A. I drove a beer wagon about seven years.
Q. Then what did you do?
A. I became business agent of the Beer Driver's Union of Phila-lphia and vicinity.
Q. You were a member of the Union before that?
A. Yes, sir.
Q. Then they elected you business agent?
A. Yes.
Q. Did you have to give up driving then?
A. Yes, sir.
Q. Have you been business agent ever since?
A. I have been business agent for over twenty years.
Q. What salary did it pay you first and what does it pay you now?
A. It paid me $15 first.
Q. A week?
A. Yes, sir.

Q. What does it pay you now?

26 A. $40 a week.

Q. Out of that do you have to pay your expenses?

A. Yes.
Q. You have to pay your expenses?
A. Yes.
Q. As business agent are you in Philadelphia all of the time, or o you travel about?
A. I am one half of the time out of the City. I am the repre-entative of our International Union and have to go over Pennsyl-ania, Maryland, Delaware County and District of Columbia. Four imes in the year I have also to go to the Middle West, Cincinnati, Ohio.
Q. You said Delaware County. You mean Delaware?
A. Delaware, yes, sir.
Q. Pennsylvania, Maryland, Delaware and the District of Colum-bia?
A. Yes.
Q. How often during the year do you go west?

A. Four times a year.
Q. You became connected with the Tageblatt at one time?
A. Yes.
Q. When was that?
A. 1911.
Q. How did you become connected with the Tageblatt?
A. I became connected with the Tageblatt when the Tageblatt was in bad financial circumstances.
Q. The same time Mr. Vogel went in?
627 A. Yes.
Q. And how did you come to go there? As a representative of your Union?
A. I came there as a representative of the United Brewery Workers, which I am on the Local Executive Board of.
Q. That is the same organization Mr. Vogel came to represent
A. Yes, sir.
Q. And when you were elected, the Board of Directors elected you president, did they?
A. The Board of Directors elected me president at the following meeting.
Q. And you have been president ever since?
A. I have been president ever since. Several years.
Q. What do you do as president?
A. When I am in the City I preside over the meetings. That is all. The meeting of the Board of Directors only. Not the stockholders. I have no right to preside over the Stockholders' meetings.
Q. How often does the Board of Directors meet?
A. Once a month.
Q. And how many times in a year do you go there to preside?
A. I have not I guess in the last two years been there but about five or six times. All the rest of the meetings, on the meeting nights, I was out of town.
Q. And do you ever go to the Tageblatt Office and have anything to do with the paper?
A. I have nothing at all to do with the paper. I only
628 go to the Tageblatt when I give them some advertising for my Local Union and for meeting days or else I have to pay a bill for an advertisement I owe of the Local Union.
Q. Do you have anything to say about what shall go in the paper outside of your own advertisement?
A. Absolutely no. I cannot say what shall go in or what shall be kept out. I want to explain to the jury, and your Honor, that even articles go in the paper already against myself, and I was not able or entitled to stop the articles against myself.
Q. You mean criticizing you?
A. Yes, sir.

Cross-examined.

By Mr. Roberts:

Mr. Schaefer, if I understand you correctly, you and the other emen became connected with this paper because it was in finan- ifficulty and it needed help?

Yes, sir.

And the purpose of doing that was so that the Tageblatt, which for the Germans or a certain section of the Germans in Phila- ia, should not go out of business?

Correct.

In other words, it was then recognized, or thereafter recognized, the Tageblatt in a sense spoke for at least a section of the an community in this City?

Yes.

And it was well known to you, well known to Mr. Vogel, and well known to all of these defendants here, that the Tageblatt in a very real sense represented the German point of view in Philadelphia. That is right?

Yes.

Therefore, you understood, and understood well, that the blatt spoke amongst the Germans in Philadelphia with some ority, as representing the German thought, didn't you?

No, sir.

Why not?

For we have not anything to do with the printing of the paper. ve never discussed it at any meeting that I was present. I have ower about printing anything in the paper.

Did you have the power to dismiss Martin Darkow?

No, sir, I have not.

You mean the Directors had not?

No, sir.

You say that now?

I say that.

Had you the power to dismiss, or did you understand you had power to dismiss Mr. Werner as chief editor?

A. The understanding was when I took the position that I had authority over the editorial department. The understanding , when I was installed as president, that I had no authority over editorial department, that I should never interfere with Mr. rner or Mr. Darkow. In fact, I did not know Mr. Darkow only il September, 1917.

Q. Were the by-laws of this corporation ever before you?

A. I never read them.

Q. You were president?

A. President.

Q. I will read you paragraph II of Article VII. "The Board of perintendence, as well as the Board of Directors, are bound to in- uct the editors concerning the policy to be pursued in the editorial umns of the Philadelphia Tageblatt." Did you know that?

A. I won't say that I did.
Q. Did you?
A. No, I did not. I never read the constitution.
Q. I will continue to read from paragraph 2 of Article VII: "T policy shall be only that the the Socialistic Labor Party of the Uni States of America." Did you know that?
A. I did not know that, either.
Q. (Continuing:) "The Philadelphia Tageblatt shall never diverted from its object, to wit, to be a benefit to the laborers general." Did you know that?
A. I knew that, because I always claimed and the understan was given to me that it was a labor paper, and as such I took it, I understood it, and I handled it.
Q. Now, it has been testified here that when the war broke out 1914 that the policy of being only a labor paper was changed, a the paper began to publish war news. Did you know that?
A. The only thing I know was that this paper was only a worki man's paper, and all I was interested in was the workingman's ne in the paper.
631 Q. You never read the editorials?
A. I never did.
Q. You took the paper?
A. I took the paper, for the reason as I stated for the worki man's news.
Q. You knew nothing about its policy?
A. No, sir. I want to state to you, gentlemen of the jury, that was plainly stated that the editors did the clipping from the evenin papers and put it out in the morning. I read the evening paper I knew all about what was in the Tageblatt the next morn ing, except the labor news, and that is the only thing I ever read.
Q. Wait a minute.
A. One-third of the time or two-thirds of the time I was out the city and never had a chance to read the Philadelphia Tag blatt at all.
Q. When did you find out that their news was clipped from t evening papers?
A. I found it out right here in this, by this, and I knew it a well, because the scissors were always used. That was always wh I heard.
Q. How did you know that?
A. By discussion, what I heard.
Q. Where did you discuss it, that the editors took the news o of the other papers? With whom did you discuss that?
A. We knew that article that came from the other paper didn't we?
632 Q. How did you know it? How did you know that?
A. Because people came and told me.
Q. Who told you?
A. The Tageblatt's pages were all made up of last night's pape
Q. Who told you?
A. Many people I met on the street.

. You did not discuss it with the editors?
. No.
. People came to you on the street and said that they knew the eblatt clipped things out of other papers because they saw it the morning in the Tageblatt?
. They had it from the papers of the day before.
. And that was the way you knew it?
. Even in the State of Pennsylvania, when I came to places re the paper was read, they said the Tageblatt had something in day that they read a couple of weeks before.
. A couple of weeks before?
. Yes. Yet I never knew it because I never read the paper.
. A couple of weeks before?
. I never read the paper.
. Where in the State of Pennsylvania was that told you? What n?
. That was told to me in Lancaster, it was told to me in Allen-n, it was told to me in Bethlehem, all different places where the er was read.
. Then, you mean to tell me that this paper circulated outside the city of Philadelphia and went all over Pennsylvania, did it?
A. It did.
Q. It did?
A. Yes, sir.
Q. Amongst the Germans there?
A. Yes, sir.
Q. People of German birth?
A. Yes.
Q. You knew that?
A. I knew that.

Mr. Roberts: I think that is all.

Mr. Gray: I offer in evidence, if your Honor pleases, a copy of a tter written by Mr. Szepanscky, which was identified by him as a rrect copy of the letter which he wrote.
Mr. Roberts: I do not know whether he said it was a correct copy.
Mr. Gray: I do not know his exact language. I will find it, but know he identified it sufficiently.
The Court: More than that, as I understand it, he identified it as a py to save you from the necessity of keeping him here.

Mr. Roberts: That is right. I have no objection to it.
The letter is marked, "Defendant's Exhibit No. 1, T. R. P." nd reads as follows:

34 New York, January 2, 1918.

DEAR MR LEMKE: Have remembered that I still owe the Tageblatt me money, which I hope to be able to pay within a short time. he account at Strawbridge & Clothier amounts to $54; on trade you ad $6.00 and on commission for Dr. Davis advertisement are $18.00

due me. Therefore are $24 to be deducted from the amount, a
consequently I owe the Tageblatt still $30. Of that a large amou
devolves really upon a Mr. Seiffert, but I expect to have to pay t
matter myself, because the same cannot likely be reached. T
amount I shall, with the beginning of the coming month, send y
in weekly rates.

Concerning the other gentleman, I thank God, I got rid of t
scoundrel after he has cheated me out of about $15. The princi
thing is, however, that the stupid act in reference to the other or
did not succeed which he had circumscribed, for only later I comp
hended it, that I had been the one, who had been fooled, and wou
have prepared for myself an appetizing soup if the matter h
succeeded, while he would have obtained the whole profit. But th
way one falls once in a while into a trap and lets oneself be seduc
to stupid deeds, which do one finally only harm without consid
ing the matter.

Of myself personally, I may report, that I am doing quite we
I work at my profession at $30 per week, so that I have better
myself considerably.

635 The money I expect to be able to pay it from 6 to 8 instal
ments. Anyhow, I shall settle the account as soon as pos
ble, so that I can clear my conscience of the matter, for my go
name is yet much more valuable for me than a few measley dolla
Therefore, no more dunning letters will be necessary.

I hope the Tageblatt is doing right well and I remain with t
best wishes and salutes for you and my former colleagues.

Yours submission,

R. SZEPANSCKY.

215 W. 105th St., Apt. Easton, N. Y. City."

Mr. Gray: I also offer in evidence the letter which the witn
Seiffert identified, and admitted that he had sent to Mr. Kreis, w
was connected with the Tageblatt, and an envelope therewith, and
translation, which Mr. Roberts will not require me to prove the c
rectness of, and he having examined it.

The letter is marked "Defendants' Exhibit No. 2, T. R. P.," a
reads as follows:

636 DEAR MR. KREIS: At last I have an opportunity to wri
and to explain my sudden disappearance from the "Tag
blatt." I address you, as you are the only one able to appreci
and to know. I will explain details later. I came, as you perha
know, directly from Pittsburgh, Pa., where I had been employ
with the "Volksfreund" and I was on my way to New York Cit
when I decided to see my old friends in Philadelphia once more.
I entered the "Tageblatt" to bid a "good day" to Mr. Lemke. Ju
then Mr. Werner came in and on hearing that I was on route
New York, he told me that in not too far a time a position for
City Editor would be vacant on the "Tageblatt," which position wou

about $20 to $22. and further he told me that I could have that ee. After short consideration I decided and I was employed with Tageblatt.

Though the salary to start was so little that I could live like a man being only by taking resort to my savings, I waited in vain receive that City Editor's place which was to pay, according to Werner's own words, $20. to $22. My savings, too, came to an l. In the meantime I became better acquainted and more familiar h Mr. Szepansecky. Through him I was introduced by and by o the business affairs of the Tageblatt, the way business is con- cted there. As this, quite in harmony with Mr. Lemke, goes on a very rotten way, it was very easy for the employes to secure a aise" for themselves on their own account and authority, additional to the small wages.

That is the reason the Tageblatt never will get and never has decent and experienced and steady newspapermen, who uld be steady men.

All those men will be forced to sooner or later look out for some- ing that pays better. Anybody can see how miserable the Man- gement is there. No order, no system, and that in a daily paper! ut I beg your pardon for criticizing this affairs. Since all my sav- gs—in spite of the royal salary I was drawing in the Tageblatt— ere used up, and when I had to get along on my weekly wages, I ad, of course, to look out for how to earn something on the side.

During that time I had become friendly with Mr. Szepansecky so ell that he let me know all about the Management business secrets f the Tageblatt. In the first place he described to me how to make oney by canvassing for subscribers. As I had to work till 1 o'clock nights it was impossible for me to make subscribers. But Mr. zepansecky knew how. We met in the morning and posed as if we ere canvassing for subscribers. We wrote down names of people hom we believed to be Germans. Back in the Office we collected ur commission of- which we were able again to live for some time. When our scheme was about to come to light Szepansecky declared hat it was time for him to disappear, otherwise his bad deeds would ome to knowledge of the Tageblatt. What he referred to I did not know then. I promised to accompany him, and then he told 38 me that he was going to take a girl along. He asked me to telephone to a certain Miss Dora, which I did, and of which Mr. Kindermann, of the Circulation Department, is witness. When had Miss Dora on the wire, I had to call Szepansecky, who talked ith her and made an appointment for the following day. When met both of them the next day, he made me the surprising an- ouncement, that he had a trade order on Strawbridge and Clothier. He asked me to come along, which I did. Another surprise came, hen he told me that I, too, was to buy on account of that trade rder. I bought in the belief the debt so contracted would be cov- red by my trade account with the Tageblatt after some time. When I had told him, I was willing to go with him, so was my motive that I was waiting to get his position, what I had been expecting so long. When we returned an hour after ending our shopping tour in order

to fetch our packages, he had told me in the meantime that he
gotten the above mentioned trade order on a dentist, had erased
name of that man and inserted instead that of the firm of St
bridge and Clothier, to enrich himself and the girl on account of
Tageblatt. After having bought, too, on his telling me to, I
more or less his accomplice, although having been drawn in
complott. In the meantime it had become time for me to start
work, but Szepanscky asked me to wait until he had been han
the goods he had bought. I did so, and suddenly Mr. Lemke
peared, very excited, and asked Mr. Szepanscky what he
639 done with the paper issued on the dentist. Upon the ans
of Szepanscky to the extent that he was not buying here,
Lemke was satisfied, much to my astonishment, and he went.
I became fully conscious of what we had done, and I had, nol
volens, to follow Mr. Szepanscky. It was clear to me that I c
not go back to the Tageblatt. I left everything and kept a
That my disappearance was forced, can you, dear Mr. Kreis,
from the fact that I was not even able to fetch my week's wages
had to leave all my belongings in the editorial room, while
Szepanscky had left well prepared in every way.

This is not intended to be a whitewashing for myself. I k
very well that I am guilty, even having acted in believing in a fri
But on the other hand I have been punished for it. Our 'Fri
ship' only lasted few more days, and when I made the experi
that this subject did betray even his friend, I left him and u
to-day I have heard nothing of him nor of his girl.

Hoping that this confession will help to restore my good nam
leave all the rest confidently to you, Mr. Kreis and sign

Very truly yours,

(Sgd.) ARTHUR A. SEIFFERT.

Mr. Gray: I believe, if your Honor pleases, that will cover al
the evidence or testimony, both documentary and of witnesses
the defense will offer. I, however, propose to read to the jury,
all that I have here, but one or two, or a few of these arti
640 for the purpose of having them acquainted with those wh
have been offered in evidence.

The Court: I have been considering that, and I want counse
use their own judgment about it, but I had this thought in m
In the course of the argument it would be necessary for you to
them. Would it be better to postpone the reading to that ti
This is merely a suggestion.

Mr. Gray: I am willing to follow your Honor's suggestion,
my thought is this, if your Honor pleases, that it sort of gives
jury these articles as evidence by reading them now.

The Court: You may use your own judgment about it.

Mr. Gray: To read them in argument becomes tiresome, an
breaks the thread of the argument to read a large number of arti
I will say to your Honor that I will, with your permission, c
promise slightly. I will just read a few of these now, to give th
an idea of what I have offered them.

The Court: Both of those considerations occurred to me. Counsel ay use their own judgment about it, and do whatever they think ould be most helpful to the jury. If you read them now, well and ood. If you postpone them until later, well and good.

Mr. Gray: Just a few of them, if your Honor pleases.

In the first place, gentlemen, paper dated April 3, 1917, contains is headline:

"Wilson Speaks.

41 Demands Declaration of the Existing Condition of War With Germany.

Calls for the Immediate Drafting of 500,000 Men and Financial id for The Allies.

Floyd's Resolution can only be Interpreted as an Indirect Declaraon of War."

Then on the same page——

Mr. Roberts: You mean you are simply going to read the heading om the article?

Mr. Gray: That is all. The paper is here. The whole article is ere as an exhibit, Mr. Roberts. I do not want to read the whole rticles now.

Mr. Roberts: But you have complained of the headlines that I ntroduced, just to show the character of the headlines.

Mr. Gray: The article is here. It is not, gentlemen, that I am eeping anything from you. I am only reading that much to you ow.

This article you will find beginning on page 5 of that book.

Then, an article appearing on April 4, 1917, entitled:

"The German-Americans and the War," from the Philadelphia ageblatt for that date.

"For the Past Two Years the Americans born in Germany find hemselves in a Fluctuating Worry. They Saw How the Public Opinion of This Country from a Certain Part of the Press and

41½ from Other Parts has been Systematically Prepared in Favor of the Adversaries of Germany. They Saw How the Same nfluences Worked thereon, to Drag the United States into the War, nd they Have Finally Succeeded. The War With Germany Seems to be Unavoidable.

42 If we, those who were born in Germany, had had any foreboding of same, that it ever would come to a war between the wo countries, then we would not be here. This case appeared to us imply incomprehensible. We knew that there were no antithesis t all between the two countries, which threatened with such a danger. We knew that Germany entertained no political intentions in Amerca, we knew that it was the American principle of government, not o mix itself up with European affairs. We took it, therefore, by right for granted, that we should never be placed in the terrible conition, to see us placed between the country of our birth and of our doption. We have always tried to do the most possible to advance he most friendly relations between the two countries. From this oint of view we have taken notice with satisfaction of the several acts of friendship from the German Government for this country,

even when they sometimes took a queer form, as the exchan
professors, the donations for the Germanic Museum of the Ha
University, the sending of the brother of the Emperor and the
erick monument. All this we could, whether we agreed with
single act or not, to take for a sign, that the German Govern
wanted to live in friendship with this country.

The constant friendship of the German people for the U
States need not be especially mentioned. Hardly had the se
of this country by the white race commenced when from it w
sued an invitation to the Germans who felt themselves
643 pressed, to select it as their asylum. In hundreds of
sands, in millions, they came, and helped in the upbui
of the country, brought along their diligence, their endurance,
trades and arts, defended it against the English tyranny, fough
the maintenance of the Union, and over there one followed th
velopment of the great American Union with nonchangeable
pathy, which in the hour of danger, during the Civil War, n
quiesced by words. The financial assistance, which the then e
poor Germany gave to the Union, dare not be forgotten, much
that Germany by the thousands during the Civil War came over
the distinct purpose, to aid liberty, and shouldered the guns
they had been naturalized.

And now: The condition we had not foreseen, that a conflic
tween the two countries in consequence of an European war
break out, and especially in reference to the manner and the s
the direction of same. This war should not ever have anticip
in our dreams. But now we stand in the face of the war, an
questions of how we stand to do it, is unavoidable. But the a
to it is quite simple and justly clear. No matter what our ideas
the causes of the war, were and still are, after the Congress o
United States had declared war, so it is for us just as much bin
as for the natives. We dare not and shall not undertake any
to the detriment of the United States, and should the call come
individual co-operation in the war against our brothers at the
side of the ocean, we dare not stand idle, but must d
644 duty and obligation for the country for whom we have
allegiance.

Can anyone expect more from us? Can anybody demand th
shall enthuse as for a war, which for us is a war among brot
Shall we be demanded, that we let our sons depart with enthus
to kill the sons of our brothers, or to maim them? We belie
have a just claim upon the consideration of our fellow citizens.
figure upon their consideration in reference to the terrible situ
we got in without our fault. And we lay full claim upon the
after we have as citizens of this country left no doubt that w
willing so to act, as our vow compel/s us."

Mr. Roberts: Two days before the declaration of war.

Mr. Gray: That was an editorial two days before the declar
of war, April 4, 1917.

On April 9, 1917 appeared as a headline to a news arti-le:
"Proclamation of War."

President Wilson issues such a one to the American People.
Points to his constitutional prerogatives in case of war.
The state of the Aliens therein is definitely discussed."
Then on the same date, April 9, 1917, the same day that the President's "Proclamation of War" was referred to, there appeared in the pazierganger you have heard referred to, containing notes, this em:

"This is the war, and it is only the beginning of it. There is nothing to do against it, and one has simply to submit. Every opposition, every challenge would be folly."

Then on the same date, another news item, referring to the President's declaration:
"Strikes the right note.
President Wilson directs message of friendship to Poincare."
That is not in reference to the declaration of war, but with reference to a message to the French.
Mr. Roberts: It does not say "strikes the right note." It says strikes the note."
Mr. Gray: The translation is "strikes the right note."
April 10, 1917:
"New Offensive.
The British have at last started same in Flanders in all earnestness.
Report taking of prisoners numbering 3,500 Enemies and great successes near Lens.
Berlin reports mentioned simply serious battles in this section."
On April 12, 1917, a news item, containing this heading:
"A Bad Repulsion."
The Germans evidently have suffered same between Arras and Lens.
Berlin admits the losses of two divisions, but declares that the battle continues.

A break thru the German line did not succeed, it says."

Another editorial taken from the collection of articles called "The Promenader."

"On account of the state war it is important for Germans and German-Americans to recall into memory the constitutional and legal provisions provided for such a status. There will, by the way, in the near future, another law be added to the existing laws, the so-called "spy" bill, which embraces a list of other things besides espionage. It will be reported about it explicitly as soon as it is passed. On the whole, it may be said that to the persons coming from the countries of the Central powers, whether they be naturalized or not, no admonition can be given more emphatically than the one popularly and short: "mouth shut." Indiscreet talk may cause much unpleasantness and it must be considered that not seldom words are not correctly reported and often misconstrued. Therefore, great caution is necessary. The best thing is not to speak about the war with anybody who does not understand German, because there are some expressions in the English language subject to various interpretations, and it may be the case that the

worst will be taken as intended. Therefore; mouth shut." (April 13, 1917.)

Headline, over a newspaper article, in reference to the fleet, "flotilla."

"Our Flotilla."

"For the time being she shall protect the entire Atlantic coast from attack.

Negotiations carried on between the admiralty here and
647 in London.

A united attack upon Germany shall be in prospect."

Then another article published as a news article, though it is a circular from the executive body of the Centralbund of Pennsylvania. It is in the Spazierganger. It reads as follows:

The executive body of the Centralbund of Pennsylvania has sent the following circular letter to the societies belonging to the Bund and to separate members.

To the societies and their members:

The present critical situation of the existence of a state of war between the land of our birth and the land of our choice imposes certain duties upon each American citizen, and the citizens of the German Empire and Austria-Hungary enjoying the hospitality of this country, the fulfillment of which duties is urgently asked.

The personal rights of the individual are in no way curtailed through the state of war, neither the rights of the societies and church communities to hold their sessions and congregations. They should be conducted in the future as in the past with due regard of the existing conditions. Each offence should be avoided that could bring the society or her members in conflict with the authorities and the law.

It need not be emphasized that during the critical time no German flags should be used to decorate the halls of the so-
648 cieties. The national flag and the banners of the society fully accomplish the purpose. Also the pictu-es of the rulers of the leaders of the armies and navies of the Central Powers should be removed, because certain persons could take offence and unpleasantness would be caused by it.

We Citizens of German descent and German citizens ought in the future to cling to each other for our mutual protection, for our mutual consolation. Wherever possible, those out of work and position should be shown the right way, so they can again obtain employment; for there will be cases where citizens of German descent or German citizens will lose their positions, because they cannot abnegate their race affiliations.

We will not derogate from our dignity as American citizens, we will hold sacred our oath of allegiance. But we cannot and will not degrade ourselves to become renegades and join in the howling against Germany and her allies. With heavy hearts we will fulfill our duties as American citizens, and leave nothing untried to procure a speedy peace and a restoration of amicable relations between the United States and Germany.

German language, German customs, German thoughts and Ger-

ong and literature will be fostered in the future despite of the
g conditions. They are necessary and of far-reaching im-
portance, when the war is over, when the reason has gained
the victory over the cry for war, to re-enter into good relations
between the two countries, and hold them permanently.
he meantime the word may rule: 'Order is the first duty of
izen.' We will be mindful of this and hope that after the
t part of the night the dawn of a new and better time will
'

Gray: That is a circular in the paper of April 22nd. I did
ad the signatures. They are J. B. Mayer, President, and
h Timm, Secretary," of this alliance. It was published in the
latt under the Spazierganger, where the contributed articles

dline of a news item:
ıy 2, 1917. Without Tarrying.
le Sam may already now send an expeditional corps to France.
Cabinet shall, as it is alleged, be for it. The General Staff
t it.
sident Wilson may in this important case give the decision."
other heading, May 7:
ıthusiasm."
ıt is the headline. That is the word.
e second heading is:
"For all citizens of military age duty now enters."
"Department of War makes arrangements without setting
the time."
at article is headed "Enthusiasm."
other headline, May 25:
eport Great Victory.
lians are said to have advanced up to the Adriatic Sea.
im to have stormed two towns and four hills and to have taken
prisoners.
enna reports battles on the Karst and the Repulsion of at-
"
other headline, May 19th:
'as to be expected.
e appearance of our destroyers has lessened the victims of sub-
bles.
e exit to the high seas is now closed to them, it is claimed.
big ocean steamer is, Nevertheless, Reported to be sunk."
king up the matter of drafting, this newspaper published an
e, which is not dated as a despatch from anywheres. It looks
ough it originated in the paper, but whether it is news, local
, or what it may be, I do not know, but I will read it to you,
ow you what it is.
'o the Registration.
number of divisions was created, and others changed.
erybody must in the voting chamber of the division, to which
elongs, register.

651 On the coming Tuesday, the 5th of June, is the general day of registration, and it deserves once again to be stated, who on this day is already twenty-one years old, and is not yet thirty-one years old, has to report. From the registration is no male person in the United States, who ranged within the above-stated age limitation, exempt. Everyone, no matter to which Nation he belongs, must on 5 June, on no other day, register in the election local of the division, in which he resides, Germans, too, namely, alien enemies must report. However can, as has been decided, Germans, namely such who are not themselves in the possession of the first citizen's paper, not be drafted to the active military service. But they must report themselves, so that the authorities know who cannot be drafted. Such Germans, who already have the first paper, can be forced into the military service of the United States Army or Navy. With citizens it is, of course, self-explained. All other aliens, such like Austrians, Hungarians, Bulgars, etc., even if they have the first paper not yet, can be drafted, as their countries are not at war with the United States. The — Turkey and Austria have only severed the diplomatic relations, and do not stand at war with the United States, and subjects of these countries are not considered as alien enemies, and can, therefore, be drafted, after they have registered on Tuesday.

Further below is once again published a list which new divisions of several wards and changes of divisions, as also the address
652 of the respective election local, in this case, the local of registration, is quoted. Everyone, should, therefore, assure himself that he has correct information, in which ward, than in which division of this ward he lives, and in which local he will have to register. Nobody is excepted from the registration, even if he should not be in the City, or even if he is sick. In the first case he must himself direct to the authorities of the City, in which he finds himself, and just the 5 June, demand a registration blank there. After he has filled out the same, he must have it attested by the authorities, and mail it with a self-addressed envelope prepaid either to the Mayor, the County Commissioner or to the Registration Board of the District in which he resides there, and without loss of time. Invalids can have registered themselves by an authorized person or by mail, but they must register. Such, who neglect this, are to expect a jail sentence of one year.

District Attorney Kane has also announced yesterday that against such, who in any way try to hinder the government in any manner, or try to influence people that they should not register, will have to expect a serious punishment.

A whole army of Secret Service Policemen will be on duty, to watch such."

The Court: I suppose there are some more of these?

Mr. Gray: Yes, there are some more of them. I will try during the recess to pick out only one or two important ones.

At one o'clock P. M. the court took a recess until 2 P. M.

2 o'clock p. m.

Present: Parties as before noted.

Mr. Gray: Just a few more of these brief articles, gentlemen. Heading, in the paper of April 6th:

"Million Army.
It shall eventually be produced by conscription of single men.
Gigantic loans and strong increase of taxes are also to be expected.
The War Departments demand a credit of over three billions."

Then on June 3, 1917:

"Sharp Measures.
Against slackers, they shall be employed at the registration.
Citizen Committees shall be employed as watchers and prepare
Quite especial measures against complots against conscription have been accepted."

There is an article underneath that. I will not bother reading it at the present time.

Then, one or two articles on the matter of this registration. On June 3 we find this: This is an editorial in the Promenader:

"All male persons within the territory of the United States between the age of twenty-one to thirty-one years have to report for the conscription, all of them, whether they be citizens, have the first paper or are aliens.

But the German holders of the first paper will probably be free from military duty. But this depends mainly on the interpretation in many parts contradictory law, but Congress appears to have been willing that the Germans, who have not become full citizens, should not be forced to fight against their native country. This consideration is to be appreciated."

June 4, 1917:

"Personal notification.
Everyone, who has to report himself to-morrow, receives such..
A whole army of agents and watchers is working, to get all of them."

Then there is an article which comes underneath that. These things show the publicity that was given to the draft.

June 5, 1917. Article headed: "Great Propaganda."

"A parade will take place to-day, to win buyers for the Liberty Bonds.

The Mayor and the Home Defensive Committee will head the same.

Fifty-thousand voluntary sellers of bonds opened yesterday morning a campaign to raise for the Liberty Loan $100,000,000 in the Philadelphia Reserve District, which includes Philadelphia, New Jersey, south from Trenton and the State of Delaware. The assigned quota of the Liberty Loan for this District amounts to $250,000,000, of which there have — subscribed so far $110,000,000, so that there are still $140,000,000 to be subscribed. The time ends on July 15. All plans for this campaign have been laid out with

the greatest care by the Liberty Loan Committee in connection with the Federal Reserve Bank of Philadelphia, and the success is considered to be assured."

That was June 5, 1917.

On June 6, 1917, the day after registration, appears this article:

"Passed quietly.

Registration for the selective draft went on in the country in an orderly way. Only in few districts it came to disorders or arrests.

The 10,000,000 number of recruits, it is believed, has been reached."

Then an article on the success of registration, which was a despatch from Washington, follow that.

Then an article on June 9, 1917, headed:

"Pershing Over there.

The American General has arrived in a British port.

Uncle Sam's marine fliers have arrived on French soil.

656 Colonel Fabry prophecies the assistance of an American Million Army.

London, July 8. General John G. Pershing, the leader of the American expedition corps, which is destined for France, has with his staff arrived in an English port.

It is taken for granted that the crossing was made without an accident, and that no German submarine boats had been sighted. The report of the arrival of General Pershing, which has been officially announced, brought about great astonishment."

June 9, 1917.

"Berlin Admits a Retreat in Flanders."

"Russian peasants declare themselves against annexation and indemnity.

A little Russian government separates itself from the central government."

June 9, 1917:

"We Must Help."

"The victory of the allies cannot be obtained without a strong support of Uncle Sam."

That appeared on June 9, 1917.

Then another article, I will not read the whole article, headed "War aims:"

"War Aims."

"Imperial Chancellor will now speak plainly about them.

Socialist Heine assures that neither annexations nor indem-

657 nities are intended.

America, an adversary, not to be underestimated, military expert says."

Then, on July 12:

"Halicz given up.

The important railroad center falls into the hands of the Russians.

Claim to have taken 2,000 more prisoners, and to march to Lemburg.

Petrograd correspondent declares the offensive as meaningless."

"July 15:

"Russian Success."
"They occupy the fortified hamlet Novice in Galicia.
Artillery fights on the west front are kept up with great intensity.
London reports German victory over German air men."
An article appearing in the Promenader on July 15:
"Repeatedly it may be said here: For criticizing a law, one cannot held to account for; to act for the repeal of a law is entirely per- issible. The freedom of speech is not abolished. Such a thing a state of war in the European sense does not exist here. All laws e valid as usual, all civil authorities are acting as heretofore, the nstitutional guarantees are now the more so valid, like an umbrella bad weather. During good weather there is no need for this or the others. Those rights one must not let be contested, other- 58 wise one becomes outlawed."

Then an article appearing on August 15, 1917, headline:
"Peace Nearer."
"Wilson will recommend the proposals of the Pope to the Allies.
Germany shall through this be driven into a tight place. Alsace- orraine is considered as the only obstacle to peace."
Same date, August 15:
"A Joyful Message of Peace."
"The Pope directs himself to the powers with peace-proposals.
Status quo ante, no indemnities, freedom of the seas and arbitra- ion courts.
An agreement shall be prepared (reached) about the Balkan, Po- and, Alsace-Lorraine and Armenia."
August 22, 1917,—I am just skipping over a few of these, gentle- men, to give you an idea of some of these things:
"The War Situation."
"Italians report further successes and the taking of prisoners of more than 10,000 men.
French attacks at Verdun have only local successes, says Berlin.
Canadians fight themselves nearer to Lens, reports London."
659 August 23, 1917, published under the article headed "From the World War" is this:
"Berlin admits enemy successes at Lens and before Verdun.
Italy's offensive appears to have been brought to an end.
Vienna reports heroic fights and the taking of prisoners of more than 5,000 Italians."
Then on page 49, August 26th, 1917:
"Michaelis"—the German Chancellor,—surrenders himself to the Reichstag.
The Italian troops have conquered the important Mount Santo.
The reactionary Russian National Assembly has started in Mos- kow."

Coming down to September 4, 1917, which was six days before the arrest was made in this case. I call your attention to the fact that the newspaper of that date contained in specially bold type, an article that was surrounded with heavy black lines, also to indicate its promi- nence, the message of President Wilson to his Army, which is short. I will read it, therefore, in full:

"White House, Washington.

To the Soldiers of the National Army:

You have taken a great duty upon yourselves. The Heart of t
whole American people is with you. Everything, what y
660 do, will be observed with greatest attention and care not on
by those, who are near and dear to you, but also by the who
Nation.

For this great war brings all of us together, makes comrades a
brothers of us, how this has been the case with all Americans, wh
we obtained our National Independence. The eyes of the world a
directed upon you, for you are in a manner the soldiers of liber
May it, therefore, be your pride to show to all humanity not on
what good soldiers you are, but also what good men, when you a
showing yourselves capable and righteous in everything, and pu
and clean through and through.

Place the scale for your behavior so high, that it shall be a glo
for all to conform to it, and then let us live according to this ai
and to add to the crown of America new laurels.

My most heartfelt confidence accompanies you in every battle an
every trial.

May God protect and lead you.

WOODROW WILSON."

That was translated into German and put into this paper on Sep
tember 4, 1917.

Defendants rest.

661 *Government's Rebuttal.*

LEONARD A. PECK, heretofore sworn, recalled, and examined an
testified as follows:

By Mr. Roberts:

Q. You have been sworn in this case?
A. Yes, sir.
Q. Have you made translations of the headlines and articles ap
pearing in the Tageblatt between April 6th and September 10th
1917, which I show you here?
A. Yes, sir.
Q. And they are, to the best of your knowledge and belief, correct
A. Yes, sir.

Mr. Roberts: I ask to have a set of headings, of which I have th
translations, marked, "Government's Exhibit No. 95."

By Mr. Roberts:

Q. I also show you a series of translations, specifying the date and the page of certain editorials and articles. These you identify also as your translations?
A. Yes, sir.
Q. And they are correct?
A. Yes, sir.

Mr. Roberts: I ask to have those marked as "Government's Exhibit No. 96."

662 By Mr. Roberts:

Q. Mr. Peck, do you know a word in the German language called "Reihe"?
A. Yes, sir.
Q. Is it a German word?
A. Yes, sir.
Q. Is it a common word?
A. It is a common word.
Q. A common word?
A. It is.
Q. What does it mean?
A. Row, line. It is used in the ranks of the army.
Q. Row, line, and it is used in the ranks of an army?
A. Yes.
Q. Is there any other use of it?
A. I think that defines it pretty well. It is used by dancers in the same way. The files of dancers in a chorus.
Q. Files of dancers in a chorus, in a performance?
A. Yes, sir.
Q. An opera?
A. Yes, sir, or in dancing.

Cross-examined.

By Mr. Gray:

Q. It means a row or a line of people or things?
A. Yes, sir. Then there are lots of idiomatic expressions. It is used in a turn. Turn.

Redirect examination.

By Mr. Roberts:

Q. Does it mean "riot"?
663 A. No, sir, not that word.

Mr. Gray: Nobody contends that it does. Nobody will contend that it does.

By Mr. Roberts:

Q. Is "riot" a German word?

A. Why I should say not. It is an English word. It may b adopted into German as many English words from other language are.

Mr. Roberts: I would like to read some of these headlines. Mr Gray has taken some headlines. I would like to read some head lines.

Mr. Roberts read the following headlines:

664 GOVERNMENT'S EXHIBIT No. 95-C.

Apr. 25, p. 1, c. 4 (headline):

Second British Offensive a Failure.

Berlin Reports a Complete Victory on the Arras Line.

The French War Commission Has Landed on American Soil.

P. 1, c. 4:

British Beaten.

Their Attacks Collapse under German Fire.

Berlin Declares the Losses of the Attackers Tremendous.

Further Development of Offensive is Awaited with Full Confidence.

Apr. 27, p. 1, headlines:

The Submarine War Rises to Dangerous Dimensions.

In England the Situation is Regarded as Exceedingly Threatening.

Uncle Sam is to Help the Allies with Five Hundred Millions Per Month.

P. 1, c. 7 (captions):

The Submarine War.

The English Are at Last Thoroughly Aroused.

The Destruction of Tonnage Increases Steadily and There is No Help in Sight.

A False Hope Still Rests on Uncle Sam's Inventive Genius.

lay 27, p. 1 (headlines):

The Loss of Ships is Getting to be Enormous.

)0,000 Tons Sunk Since Beginning of the War, 3,000,000 in Four Months..

76 Persons Killed in England in the Last Air Raid.

P. 1, c. 3:

Gigantic.

ce the Beginning of the War 4,400,000 Tons Have Been Sunk.

Allied Losses by Submarines 850,000 Tons in April.

This is Reported in the French Chamber of Deputies.

June 27, p. 1, c. 7., cap.:

Short Lived Joy.

French Penetrate German Lines at Hourtebise.

German Counter-attacks Throw Them Quickly Out Again.

London Reports Alleged Success in the Direction of Lens.

Jun- 28, p. 1, c. 7, captions:

Humbug.

The British Won No Success at All at Lens.

Occupied a Trench, but Were Driven Out Again.

erman Airmen Distinguish Themselves Again by the Number of Their Victims.

July 6, p. 1, headlines:

Russian Offensive Stops Completely.

'he Conservative Party Now Comes Out also for Prussian *Electrical* Reform.

Admiral Capelle Declares the Submarine War a Sure Success.

P. 5, c. 4, cap.:

Optimism.

Admiral Capelle is Sure of a Success of the Submarine War.

The Military Position, Too, is Favorable on All Fronts.

666 July 9, p. 1, c. 1 (captions):

Danger Increased.

New Inventions for German Submarine Act Splendidly.

Danger of Discovery Diminished and Quicker Submersion As

A Defense against the Submarine is Still Waiting for its Inv

July 1, p. 1 (headline), caps.:

Sumbarine Annihilated 35,000 Tons in Three Days.

The Submarine War Might Reach a High Record this Mon

Mighty Battle on the West Front.

Germans Expected to Break Through at Verdun.

July 11, p. 1, c. 3, cap.:

Control of the Air.

German Aviation is Far Superior to That of Its Opponent

Lloyd George's Position Hurt by the Last Air Raid.

The Number of Victims Increases Continually.

Aug. 1, p. 1, c. 5 & 6, cap.:

Facts Speak.

548,737 Square Miles of Conquered Territory in Germany Han

Conclusion of Three Years of War.

The Allies Have German Colonies and Nothing Else.

Aug. 13, p. 1, headlines:

New Air Raid on Southeast Coast of England.

Mackinson's Army Beats Russo-Roumanians and Makes 7
Prisoners.

367 C. 5, caps.:

British and French Attack on the West Front Bloodily Repulsed.

Brilliant Victory.

Mackenson Gains it Over Russo-Roumanians in Maldavia.

6,700 Men Taken Prisoners, 18 Cannon and 67 Machine Guns Captured.

French and British on the West Front Sent Home with Bloody Heads.

Sept. 7, pp. 1, headlines:

German Troops Advance Further in Vivonia.

The German Baltic Fleet is Already in the Gulf of Riga.

The Report of the Capture of Mt. St. Gabriel Was an Idle Fiction.

Apr. 22, p. 8, c. 3, cap.:

More Troops.

Recruiting Show in the Academy of Music Brings Out Enthusiasm But Apparently Nothing Else.

Only the Coast Guard Completed, and a New Appeal Necessary for Home Defense.

Apr. 30, p. 8, c. 1, caps.:

Where Are They?

Very Few Local Boys Seem to Have the Desire to Conquer Berlin.

Recruiting is Far From Meeting Expectations.

May 17, p. 1, c. 7, caps. :

Fresh Fodder.

General Petain Wants to Get it for the Cannons from America.

German Advances on French Front Bring Small Gains.

668 Apr. 18, p. 1, c. 3:

(Cont'd) Paris and London Continue to Talk about German Attac

Allied Lies.

No General Strike in Berlin and No Threatened Labor Trouble

Individual Strikes Short Lived, Only for the Purpose of Demonst
tion.

Expert Declares that the Sure Failure of America's Harvest M
Decide the War.

P. 1, c. 5:

A Great Battle is Actually Now in Progress on the West Front.

Reports of Victory of the Allies are Terribly Exaggerated.

Berlin Reports the Repulse of the French Offensive at Champag

Apr. 26, headlines:

Uprising of Russian Peasantry against the Nobility.

The Government Tries in Vain to Stop the Appropriation of Lar

French Mission Makes Shameless Demand of America.

P. 5, c. 5, caps.:

The French.

Food Stuffs and a Hundred Million Dollars a Month Are The
Hearts' Desire.

A Little Army Too, is to Come Over for the Sake of Its "Mor
Effect."

Apr. 28, p. 1:

669 Apr. 28, p. 1, headlines:

The Allies Nearer Victory Says Lloyd George.

Uncle Sam's Entrance Has Neutralized the Submarine Losses, is H
Opinion.

House and Senate Will Vote Today on the Conscription Bill.

P. 1, c. 6:

He is Driveling Again.

Lloyd George Boasts that the Victory of the Allies is Now at Last Certain.

Will Find Means against the Submarine All Right Says British Prophet.

The Entrance of Uncle Sam *in* the Greatest British Victory that Can be Imagined.

Apr. 30, p. 1, c. 6:

A Change in Command.

General Petain is Now to Take the Chief Command of the Allies.

The British-French Offensive Regarded as a Failure.

May 25, p. 5, c. 5, caps.:

With Wilson.

The Italian Commissioners Received by the President.

Desire No Cannon Fodder, Only Money and the Annihilation of the Submarines.

June 4, p. 1, c. 4, caps.:

Brit*ian*'s Lie.

The Loss of Ships from the Submarine War is Very Considerable.

(See Synopsis of the Whole Issue of June 4th.)

Aug. 3, p. 1, headlines:

Bad for the Allies.

Sadness Prevails Along the Whole Line.

670 P. Q. c. 1 & 2:

British Offensive Stuck—Further Retreat of Russians—Russiloff Leaves—Sorrowful Declaration of Terestschensko—Nothing More to be Expected of Russia, Says British Chief of Staff—Break in the English Ministry Approaching—Samuel, Help!

Aug. 4, p. 1, headlines:

News for the Allies Worse and Worse.

Grave Crises Prevails in England, France, and Russia.

Czernowitz Has Fallen. Kimpoling Has Been Evacuated by the Russians.

Aug. 6, p. 1, headlines:

England's Malice Laid Bare by Gerard.

King George and His Cabinet Play in Assigned Parts.

Bukowina Too, Will Soon be Clear of Russians.

The British Offensive in Flanders *Lawed.*

Sept. 3, p. 1, c. 4, head:

The Gist of the Matter.

What Japan Really Proposes with Its Special Mission is Given Away.

Wants to Keep Kiautschau and Annul the Root-Takahira Treaty Regarding China.

May 9, p. 1, c. 7, caps.:

Greatest Need.

England Must Get 4-5 of Its Wheat from America.

If Delivery is not Made in Spite of the Submarine, Its Cause is Lost.

671 Sep. 7, p. 1, c. 7, caps.:

Building of Billion Dollars' Worth of American Ships is Doubtful.

They Lied.

Mt. St. Gabriel Has not Been Captured at All by the Italians.

Six Attacks on the Mount's Peak Were Repulsed with Fearful Losses.

Rome Already Reports the Concentration of Gigantic Masses of Troops against the Attackers.

Sept. 8, p. 1, c. 4, caps.:

Recaptured.

ustrians Tear from the Italians Their Position on Mount St. Gabriel.

Germany Retains Positions Lost in West Flanders.

New German Gotas Show the Best Results in Flying.

Sept. 8, p. 1, c. 3:

Disappointment.

loyd George Should Have Spoken About the British War Aims. Instead of that He Went on with the Old Meaningless Generalities.

ir Edward Carson is Led Before the British as a Victorious Parade Horse.

Apl. 11, p. 4, c. 3, caps.:

Vain Efforts.

Washington Has Sought for a Long Time to Get Rid of Dual Monarchy.

All Negotiations with Respect to Her Fidelity to Her Allies Have Proven Vain.

The Wording of the Austrian Note on the Breach of Relations Has Now Been Published.

672 June 1, p. 1, headlines, caps.:

Our People Are Fed on Lies.

American Officer Says So, Declares Submarine Was Success.

The United States Senate Spreads the Table of the Poor Man with Taxes.

C. 7, caps.:

Nothing But Lies.

The American Public is Fed on Them, Says Yankee Officer.

Pictures the Destruction of Merchant Ships by Submarines as Fearful.

No Means of Defense Up to Now Has Proved Effective, Says He.

June 4, p. 1, headlines:

Professor Kunehemann on America's Entry into the War.

Only a Pretext in Order to be Able to Play a World Part.

Italians Suffer Severe Defeat East of Goerz.

July 1, p. 1, c. 7:

Lloyd George.

His Utterances about Germany Meet Approval in Washington Government Circles.

A Near Conclusion of Peace is Openly Expected There.

A Little Bit of Reform and Wilson Will Declare Himself Satisfied.

Aug. 5, p. 1, c. 5, caps.:

Hot or Cold, Senator Lewis, Wilson's Alleged Representative, is for Peace.

On the Contrary, Son-in-law, M'Adoo Talks for War.

New Peace Conditions Were Proposed in Congress.

673 Apr. 19, p. 5, c. 4, captions:

To Order.

American Scholars are Now Making War Inventions Ordered for the Repulsing of Submarines, Airships and Gas Attacks.

Apr. 22, p. 1, c. 2, caption:

So, An Indirect Blockade.

Apr. 24, p. 1, c. 6, caption:

Good Prospects.

Bread is to Cost Ten Cents and Weigh only 12 Ounces.

The Bakers Cannot Help Themselves Otherwise, in View of the Present High Prices.

Want is Coming.

Apr. 28, p. 1, c. 5:

Wheat Was Sold in Chicago Yesterday at Over $3 Per Bushel.

Bread Cards Are Seriously Considered by Our Government.

In New York a Mixed War Bread is Already Being Baked.

July 18, p. 5, c. 2, caps.:

Government Without Plans.

We've Got Plenty.

Five Billion Dollars More for the Allies.

Such a Demand Will Go to Congress before Adjournment.

July 25, p. 7, c. 4, captions:

We've Got Plenty!

Five Billion Dollars More Wanted for the Conduct of the War. Secretary of the Treasury Surprises Congress with the Unexpected Demand for Money.

674 Apr. 20, p. 1 (headline):

Uprising of the Germans in the South Provinces of Brazil.

No German Submarines on Our Atlantic Coast.

Berlin Brands Today's Reports of the Attack on the "Smith" as Untrue.

Apr. 21, p. 1, headlines:

Uprising in Brazil Assumes Greater Dimensions.

Germany Said to Have Concluded a Truce With Russia.

The Offensice of the French on the West Front, is Gradually Diminishing.

P. 1, c. 7, caps.:

Uprising Increases.

The Situation of the Three German Provinces of Brazil, Becomes Threatening.

Apparently There Has been Sharp Fighting There Already.

Brazil Workingmen Take a Decided Position against the War.

Apr. 26, p. 3, c. 3, captions:

Hear! Hear!

A Frenchman Says That the Cause of the Allies is in a Bad Way.

In Brazil, the Germans can Force Neutrality.

VII.

Attacking the Government.

675 May 24, p. 4, c. 2, captions:

Unheard of.

(Washington, May 23rd'; The State Department Has Confirmed the Report That the Socialist Delegation to the Stockholm Convention, Will be Refused Their Passes.)

June 1, p. 1, c. 3, captions:

In Doubt.

Washington is not Quite Sure of the Success of Conscription.

Numerous Arrests of Opponents Expected Including That of a Lutheran Pastor. Spoke Disrespectfully about Wilson.

June 4, p. 1, c. 1, captions:

Before the Leaves Fall.

Germany Certain that by that Time Peace Will be a Fact.

Failure of Offensive in the West and the Russian Revolution Will Force it.

The One-sided Neutrality of America Since the Beginning of the War Will not be Forgotten.

June 7, p. 5, c. 3, captions:

Gigantic Fraud.

Is said to Have Been Perpetrated with Registration Certificates.

Mayor Denies All Responsibility, Likewise the Registration Officers.

ne 22, p. 3, c. 2, caps.:

Phantasies.

Allied Victory is to be Won by American Air Ships.

Statement of French Lieutenant of Aviation, De La Grange.

Government closes.
Testimony closed.

r. Gray: If your Honor pleases, the Government advises me they have closed. I intended, in view of our discussion, be- n counsel and your Honor, to draw certain points in the matter inding instructions. I see no reason why we should delay for drawing of them if your Honor will permit me to make the ions and have the stenographer take them down, and they may assed upon.

he Court: I will say further, Mr. Gray, if counsel on either side re to present any points, you may prepare them at any time be- the conclusion of the charge and I will pass upon them.

Ir. Gray: I may be glad to do so. As your Honor knows, in cases I have tried before you, I very rarely present points.

Ir. Roberts: I do not understand that we have any right to do n a criminal matter.

Ir. Gray: He has the right, undoubtedly. Anybody has the ht. You have the right the same as we have. You have the ht to present them the same as you did your brief. I see no rea- why you cannot present points.

Ir. Roberts: The Government has no exceptions.

Mr. Gray: You have no exceptions, but that does not in-
7 terfere with your right to present them at all.

The Court: I see nothing improper in it. I can see erein it might be very helpful to hand in any special points upon ich you feel it would be important for the court to pass upon.

Mr. Roberts: I may, then, hand your Honor a point or two in morning. I have not any prepared at this time.

Mr. Gray: I will say to your Honor that these matters I am going present to you now I have heretofore presented to you, but you derstand I must present them now in order to get the benefit of ur Honor's ruling and an exception at the close of the entire case. I, therefore, ask your Honor to instruct the jury to render a ver- ct of "Not Guilty" as to all of the defendants upon all of the unts.

(Motion overruled.)
(Exception noted for the defendants, individually and jointly, direction of the Court.)

78 Mr. Gray: I request your Honor to instruct the jury to render a verdict of "Not Guilty" as to all of the defendants pon the first count.

(Motion overruled.)
(Exception noted for the defendants, individually and jointly, by direction of the Court.)

Mr. Gray: I make the same motion separately as to each of the remaining counts, which are 2 to 9 inclusive as to all of the defendants.

(Motion overruled.)
(Exception noted for the defendants, individually and jointly, by direction of the Court.)

Mr. Gray: I move that the jury be instructed to render a verdict of "Not Guilty" as to the defendant Louis Werner as to the first count of the Bill of Indictment.

(Motion overruled.)
(Exception noted for the defendants, individually and jointly, by direction of the Court.)

Mr. Gray: I desire to make the same motion separately with respect to the defendant Louis Werner as to all of the counts of the Bill of Indictment from Nos. 2 to 9 inclusive.

(Motion overruled.)
(Exception noted for the defendants, individually and jointly, by direction of the Court.)

Mr. Gray: I desire to move that the jury be instructed to render a verdict of "Not Guilty" as to the defendant Martin Darkow
679 as to the first count of the bill of Indictment.

(Motion overruled.)
(Exception noted for the defendants, individually and jointly, by direction of the Court.)

Mr. Gray: I make the same motion with respect to the defendant Martin Darkow as to each of the other counts in the Bill of Indictment, Nos. 2 to 9 inclusive, making the motion separately.

(Motion overruled.)
(Exception noted for the defendants, individually and jointly, by direction of the Court.)

Mr. Gray: I move your Honor, to instruct the jury to render a verdict of "Not Guilty" with reference to the defendant Herman Lemke as to the first count of the Bill of Indictment.

(Motion overruled.)
(Exception noted for the defendants, individually and jointly, by direction of the Court.)

Mr. Gray: I move your Honor to instruct the jury to render a verdict of "Not Guilty" with reference to the defendant Herman Lemke, the same motion with respect to each of the other counts in the Bill of Indictment, being Nos. 2 to 9 inclusive.

(Motion overruled.)
(Exception noted for the defendants, individually and jointly, direction of the Court.)

) Mr. Gray: I move your Honor to instruct the jury to render a verdict of "Not Guilty" with respect to the defendant ter Schaefer.

(Motion overruled.)
(Exception noted for the defendants, individually and jointly, direction of the Court.)

Mr. Gray: I move your Honor to instruct the jury, making my otion separately as to each count, to render a verdict of "Not uilty" as to the defendant Peter Schaefer with respect to each count the Bill of Indictment from 2 to 9 inclusive.

(Motion overruled.)
(Exception noted for the defendants, individually and jointly, y direction of the Court.)

Mr. Gray: I move your Honor to instruct the jury to render a erdict of "Not Guilty" with respect to the defendant Paul Vogel s to the first count of the Bill of Indictment.

(Motion overruled.)
(Exception noted for the defendants, individually and jointly, y direction of the Court.)

Mr. Gray: I make the same motion separately with respect to ach of the other counts of the Bill of Indictment, being Nos. 2 to inclusive, with respect to the defendant Paul Vogel.

(Motion overruled.)
(Exception noted for the defendants, individually —.)

381 Mr. Gray: I ask your Honor to instruct the jury to render a verdict of "Not Guilty" as to all of the defendants upon the irst count of the Bill of Indictment.

(Motion overruled.)
(Exception noted for the defendants, individually and jointly, by direction of the Court.)

Mr. Gray: I ask your Honor to instruct the jury to render a verdict of "Not Guilty," making the same motion with respect to each of the other individual counts of the Bill of Indictment, being Nos. 2 to 9 inclusive, as to all of the defendants.

(Motion overruled.)
(Exception noted for the defendants, individually and jointly, by direction of the Court.)

Mr. Gray: I would ask your Honor, making this motion in the form of a point, to instruct the jury to render its verdict, whenever it shall render it, separately as to each of the defendants upon each

of the counts in the Bill of Indictment. This is a matter for you Honor to consider in giving the jury your charge.

The Court: I will dispose of that when the charge comes to b made.

At 2.36 P. M. Mr. Roberts began his opening argument to th jury, and concluded at 4 P. M.

682 The Court: Gentlemen of the Jury, you are relieved unti to-morrow morning at ten o'clock.

Court adjourned until Friday September 27, 1918 at ten o'clo A. M.

Friday, September 27, 1918—10 a. m.

Present: Parties as before noted.

At 10.10 A. M. Mr. Gray began his argument to the jury on b half of the defendants, and concluded at 11.39 A. M.

At 11.40 A. M. Mr. Roberts began his closing argument to th jury on behalf of the government, and concluded at 12 o'clock M

683 The following are the translations offered in evidence b Mr. Roberts:

"The Crisis," a copy of which appears on page 2 of the Indictmen

"Confirmed," a copy of which appears on page 4 of the Indictmen

"Ups and Downs," a copy of which appears on page 6 of the In dictment.

"What Washington Hopes," a copy of which appears on page of the Indictment.

"Serbia," a copy of which appears on page 11 of the Indictmen

"An I-terim," a copy of which appears on page 13 of the Indic ment.

"Nothing Certain," a copy of which appears on page 16 of the In dictment.

"War of the Rich," a copy of which appears on page 20 of the In dictment.

"Further Economies," a copy of which appears on page 24 of th Indictment.

"Sarrail's Troops Beaten," a copy of which appears on page 25 the Indictment.

"For Political Reform," a copy of which appears on page 27 the Indictment.

"What Does This Mean," a copy of which appears on page 29 the Indictment.

684 "Ready for the Fray," a copy of which appears on page 3 of the Indictment.

"For the Fourth of July," a copy of which appears on page 3 of the Indictment.

"Yankee Bluff," a copy of which appears on page 35 of the In dictment.

"The Failure of Recruiting," a copy of which appears on page 39 the Indictment.
"The Crack Shots.

Again Think They Have Hit a German Submarine.

London Reports Astounding Deeds of Armed Steamer.

London, July 1.—According to a report received to-day naval gun-rs on an armed American liner have once more performed heroic eds on its voyage here. The unnamed steamer was attacked by o submarines. Although the submarines were at great distance, ey were fired at, and with such excellent aim that the crew be-eves it struck one of the submarines. A third submarine ap-eared but quickly submerged again. The passengers of the steamer re overcome with admiration for the masterly American gunners, who had already given signal proofs of their skill during 84½ the trip by hitting a barrel seven times out of eight. One member of the armed crew is an Englishman.
(This story is obviously to be classed with the other similar stories hat bob up from time to time but can never be reliably confirmed.")

385 *Meeting of the Board of Directors Monday, June 25th,* 1917.

Presiding Tillger.

Financial Report.

Surplus	$357.65
In Treasurer's hands on the 22d	1,999.13

Business Report.

I. In connection with the purchase of matrixes decided upon at the last time, a representative of the Morganthaler Company came from New York; with him we tested the matrixes and made the recommendation not to buy a whole set but only the matrixes that would cost $62.00. He also advised us not to make repairs, any more on the old machines, but to buy new machines. He offered a brand new modern three magazine (18) machine, for $2600. and agreed to allow 850 for the old one. This offer is favorable and should be accepted if the conditions of the war improve, especially if peace comes. I ordered matrixes only for one machine, and we will be able to get along through the summer.

II. The Sunday Journal appeared for the last time on June 3rd. I tried at once to get the list of subscribers but Regensburger had no such thing. Therefore I applied to the news companies and the carriers. To these I made the offer to deliver our paper free for three Sundays to those persons who until now had been reading the Sunday Journal. The success appears good. 59 sub-

686 scribers have so far been reported, and the main resul
still to come in the course of the week.

The Tageblatt is also growing very gratifyingly. This is
cipally to be ascribed to our powerful stand. Many Germa
not at all satisfied with the stand of the other German newsp

The department of Justice has repeatedly visited us. We
taken by surprise, but as we are doing nothing contrary to la
action was undertaken against us.

Meeting of stockholders July 30th.

687 Be Thankful. It is the duty of mankind to help
once can and in this sense we have given considerati
every respect to the wishes of our friends the allies.

The allies wanted money and they got it—they wanted ship
we sent our fleet—they wanted more ships and we are building
at the greatest possible speed.

Our friends wanted wheat as well as other foodstuffs, and we
it—barley likewise so that the poor Englishmen could have
accustomed beer—and they will get it.

They wanted soldiers. By conscription an army of a millio
be quickly raised as if from the ground.

Last of all they cable, "Send us your school boys"—"Am
high schools are to supply airmen"—and they will get the flo
our nation as well.

One thing only have our friends not asked for and for th
should be thankful to them. The allies have not yet demande
wives and daughters!

Let us thank them that they have left us these, some sunsh
still left us.

Peace.

Washington Suddenly Begins to Talk of an Early Conclusi
Peace.

Events in Germany Regarded as Cause for It.

It is Not Well to Speak of the Allies.

Washington, July 14.—The entente will have an o
688 tunity to refuse peace without annexations and withou
indemnities. That is clear to-day to diplomatic as w
official circles of the Federal Capitol. The latest news from
many makes it known that the reform element is in control.
fused to vote a new war credit until reforms were assured. In
nection with this, without doubt, the conditions of peace of the
man allies will be made known in official circles.

Meanwhile, an early end of the war is considered for the p
improbable because the war party in Germany will resist as lo
possible the giving up of Belgium and Serbia. However, it wa
clared that the internal political developments in the German
pire will bring it nearer. It is considered not improbable that
negotiations will have been begun before the commencemen

inter. The war preparations of the United States meanwhile will
e continued; everything will be sacrificed in order to place a great
my in the field and to make the fleet as efficient for war as possible.
Official reports make it clear the United States has not received
e support from the Allies which is necessary in order to increase its
ar efficiency. American Officers have had no opportunity to be-
me familiar from their own observation, with the methods of trench
arfare. Requests for the use of the latest models of French and
British air craft and their motors which are decidedly supe-
89 rior to those obtainable in this country, have thus far been
ignored. Explanations of the most modern weapons of the
rench artillery are also lacking.

In official circles the conviction exists that the reforms which are
be carried out in Germany have not been announced only for the
ke of appearance. Officials are inclined to the view that universal
ffrage will be introduced into Prussia, whereby the Junker element
ould be eliminated. Whether the Imperial Chancellor too will be
ade responsible to the people is not yet certain, but in official circles
is believed that it will come eventually and thereby a way to peace
ill be opened.

(So they have already begun to crawl out of an untenable position.
he reform in Germany, which of course will be credited to America,
ust serve as an excuse. If Germany reforms herself, she does not,
f course, need to be liberated from here. Besides it makes the lazy
llies feel sour. That seems to be realized now. They just want to
orrow all Uncle San has; they are good for nothing and their cause
s hopeless.)

This Sounds Good.

Unity at Home Firmness Abroad, is the Aim of the New Chancellor.

The Blockparties Want to Pledge Him to Their Peace Resolutions.

890 All Parties Claim Him and All Acclaim His Unbending Will.

Berlin, July 27.—The coalition parties have united so far as to present at the reopening of the Reichstag in the form of a resolution, a peace program which is to be accepted by the new chancellor in principle before the new war credit will be voted. It is said that this plan will be carried out if the coalition holds together to the last decisive moment. Fears are expressed that the centre or at least its conservative wing may fail.

London, July 17.—A dispatch from Berlin delayed here, announces that the program of the New Imperial Chancellor, Dr. George Michaelis, may be summarized as follows: 'A strong policy abroad, unity at home.' Most probably the new Chancellor will announce his program before Thursday.

Parliamentary Reform.

Berlin, July 17.—Most newspapers point out that the Emperor h
expressed himself openly against parliamentary reform on the En
lish plan and this is evident from the fact that he appointed a ne
Chancellor without consulting with the party leaders in the Reic
stag. As a matter of fact no one in the Reichstag up to the last m
ment had the slightest idea of the appointment of the new Chance
lor. Most newspapers point out that such a parliamentary syste
as some people fancy, cannot be harmonized with the German Fe
eral Constitution and that a proposal to form a council of the Empi
was justly refused by the former Chancellor.

691 The 'Vossische Zeitung' points out furthermore that it
not at all necessary that the principle of control by the Reic
stag over domestic and foreign affairs be put specifically into th
constitution. The responsibility of the Chancellor to the Reichst
depended on nothing but the Reichstag itself. It had the power
force an unsatisfactory Chancellor to resign if it would only use i
initiative energetically. On the other hand a formal confirmatio
of the responsibility of the Chancellor to the Reichstag had not th
slightest weight if this Reichstag be weak willed.

Not a Party Man.

It is significant that almost all parties claim the new Chancello
This is easily explained by the fact that Dr. Michaelis is no party ma
and this circumstance is regarded as especially favorable in the pre
ent crisis. He is regarded as a man with the strictest sense of dut
and of unlimited energy. He proved that as the head of the Foo
Administration when he made the significant remark, in spite of th
fact that he stood literally in a wasp's nest: 'I should like to see th
man that would undertake to stop me in the fulfillment of my duty
The 'Vossische Zeitung' writes as follows of the new Chancello
'He has already given proof of rare capacity and extraordinary e
ergy. Some days ago we mentioned that he is the only man wh
enjoys the confidence of all parties, of the Right and the Left. W
regard him as a statesman who as a result of temperame
692 and extraordinary oratorical gifts appears best qualified
solve the difficulties of the situation. In all his offices up
now he has proved himself a man of unusual energy and good jud
ment. Moreover he is a worker who does not know weariness an
can endure the most fatiguing hardships. His pre-eminent qualiti
were recognized by the government when he was still in subordina
positions.

Count Von Reventlow writes in the 'Tageszeitung' as follows: 'W
shall meet the Chancellor with complete frankness. We assume th
his first purpose will be to establish unity among German peopl
Of course, we must wait till he shall turn his program into acts, b
we can promise him surely that in the above purpose he may cou
on our full support. We know that he is undertaking a heavy r

onsibility, and we hope that he will enjoy permanently the con-
dence of the Emperor.
The 'Tagliche Rundschau' which was first to mention Michaelis
s the possible successor of Bethmann-Holweg expresses hope that the
erman people and all the parties of the Empire will give full con-
dence to the new Chancellor.

Review of 1916.

The Military Successes of the Germans in the Previous Year.

All Offensives of the Allied Smothered in Streams of Blood.

693 The 'Tagliche Rundschau' of January 1st said: When the year 1916 began the iron wall stood unshaken in the same place where we established it at the end of 1914 through France and Flanders. Towards the east we carried our lines far into the enemy's country. In the Balkans the fate of Serbia and Montenegro was sealed. The Dardenelles enterprise was in its last throes and the Italians had still not accomplished the winning back of the 'unredeemed' provinces from Austria, which they so hotly desired.

It was to be expected that our enemies would learn from their mistakes and make efforts in the new year to assure themselves of superiority at last by a unanimous and simultaneously conducted mighty effort on all fronts. In the light of the preparation of the attacking forces for bad weather, we expected that the great general offensive would be ready only in the summer of 1916.

Our army command anticipated the plans of our enemies by the attack on Verdun. It is true that by bringing up one-third of their entire forces the French succeeded in holding the ruined city itself and in pressing back the ever narrowing ring on or Northeast. But Verdun has lost its significance as an outpost and France's strength suffered the most bloody losses here.

Our successes at Verdun inspired the Russians to a premature mass offensive in March, 1916, against the front of Field Marshal von Hindenburg south of Dunaburg. The Russian attacks collapsed under unexampled losses.

694 Then in June began the great Russian offensive between the Pripiet Marshes and the Rumanian border; the Russian Army attacking forces it largely outnumbered and supported by strong artillery, succeeded in pressing back the Austrian front as far as Lustk and in the south managed to occupy Bukovina, but the mighty flood broke on the armies of Count Bothmer and General von Linsingen. The offensive of Brussiloff, which originally covered a front of 350 kilometers, came to a standstill at the end of August. In September there followed some extraordinarily vehement attacks, but after that the offensive ebbed away. Now there is a fairly straight line of firmly built defenses drawn from the region south of Riga down to the Carpathians.

In several places our troops took over the offensive with success. Russia has not reached any of its strategic objectives, neither Kovel nor Lemberg nor the Hungarian plains. It has paid for its fruit-

less efforts of the months from June to September with a loss
about a million and a half dead and wounded.

In the west the great Anglo-French offensive was commenc
England threw into battle her entire forces, long carefully spar
and added to them an unheard of mass of artillery and munitio
for which her entire home industry had been mobilized, and
which she had the support of the war industry of the whole wo

France likewise threw strong units into the deciding p
695 at the Somme, as they were released by the diminishing pr
ure at Verdun.

The onslaught of about 225 divisions was held to a standstill
our unparalleled troops. The territory won was negligible.
sacrifices made by the English and French were gigantic. Judg
from the English casualty lists, conservative estimates place the lo
of the English from July 1st to December 1st at 600,000 men
those of the French at 250,000.

The Anglo-French offensive failed to reach its objective, the bre
ing through and rolling up of our lines. The offensive was more
more freely labelled in the press an effort to relieve pressure.
even that object was not achieved. On the contrary it made it
sible for our highest army command, confirmed in its confidence
the unshakable power of resistance of our defenders in the west
release other forces and retain its freedom of action in spite of
enemy's mighty efforts.

On the entry of Rumania into the war our enemies renewed t
belief that the Central Powers would break under this new wei
The events on the Rumanian front are still vividly before our e
The Rumanian army which had advanced into the Siebenbur
was swept aside with unbelievable might. At the same tim
mighty onrush of German, Bulgarian and Turkish troops br
down the resistance of the Rumanians and of their hurriedly gath
Russian supporters in the Dobrudja.

Then began the difficult battle in the mountain pas
696 where the Rumanians, supported by the character of
country and innumerable well built defenses, offered a
perate resistance. After weeks of tedious fighting we succeeded
breaking through the mountains and entering Wallachia. That
followed by the passage of the Danube and then the operations
a course which has never been equalled in brilliancy and succes
the whole history of war. The Rumanian army lost in priso
about one-third of its entire strength and its bloody casualties n
have numbered about the same. The capital and powerful fort
Bukharest, and half of the whole country, and that, the most valua
are in our possession. In victorious pursuits our troops are nea
the Moldau.

During all this Bulgarian and German troops in Macedonia
held fast the heterogeneous army of Sarrail.

Thus we enter the year 1917 full of pride for the unparall
deeds of our heroic and spirited troops and for our superior lea
ship, full of confidence that victory can no longer be torn from
and with the pledge that we will make true the words spoken by

Majesty in the army order of December 12th, 1916, 'Stand fast and Conquer.'

Roth is the name of the Canaille and he was the American Vice-consul at Plauen in Voigtland until the breaking out of the war. As a mitigating circumstance the Christian name of Curtis was allowed him which indicates that Roth was born in this country.
697 He is therefore no mangy German dog, but an American rattlesnake. And that at least is a comfort. This Roth published an article covering a whole page in last Sunday's Ledger, the character of which is indicated by the title the Ledger gave it; viz: 'Stop the Neutral Exports to Germany, and a General Famine will put an end to the War.' 'Slowly Starving, the Central Powers are Trembling on the Brink of Revolution,' says the ex-consul of Plauen. As an exception to the rule the title is not misleading, but literally expresses the contents of the article. To make it stronger there are pictures too—and such pictures! Before the war, well fed, stout women with smiling faces, their well filled market baskets under their arms; during the war, a despairing, languishing, hanstarved family sitting around an empty table.

The text is gloom upon gloom. Slow but sure starvation, no salvation possible, and satisfaction at it, showing between the lines. But to make the end by starvation more quick and certain, this carrion buzzard urges that the blockade be made so strict that not a grain of food may get to Germany. If that is done a hunger revolution will bring the desired glorious victory to those people who claim not to be at war with the German people, but only with their government.

Now this fellow has been for years in Germany enjoying himself. He has a German name, probably knows a little German too and has in all probability traded on his Germanism. He speaks of
698 his friendships among the manufacturers and exporters of the Saxon industrial city. The consul was of course an important personage to them on whose favor something depended. Added to this the sympathetic respect, which the Germans had for Americans any way, but which they have, we hope, not got rid of. Mr. Roth also doubtless played an important society role in Plauen, was introduced into the best families and treated with attention and favor. Now this man—beg pardon for calling him that—wishes the starvation, the literal starving to death of the people among whom he lived, who esteemed him, from whom he filled his pockets. Words cannot properly express the depth of contempt which one feels for such unspeakable baseness. Therefore we add him to Gerard, Ackerman, and other muckrakers whom, however, this Canaille Roth far surpasses in moral degradation.

Gloom Upon Gloom.

The reader is invited to take a look at today's 'Tageblatt.' If in this heat he has no time or desire to read it through from front to back, he can content himself with reading the titles. With us,

you see, the head lines agree complete with the contents of the articles, which cannot be claimed by most English newspapers. Often they fit like a fist on your eye. The news itself comes for the greatest part from anti-German sources. All together form a fabric the purpose of which is to make the German cause appear as hope-
699 less as possible. It is well known that the boa-constrictor coats its victim with slaver before it gets ready to swallow it. There is no lack of slaver in the camp of the allies, the swallowing, however, is another thing. The German lion isn't dead yet; he is even so much alive that he can hold fast in Flanders and on the Aisne with two paws and administer blows with the third in Galicia and Bukowina.

Our news comes for the greater part from the camp hostile to Germany. And now let us take a look at today's collection. The military as well as the political. We shall commence with the former. The English troops have mostly gained the objective set for them, says the English report proudly. Before breakfast we read something else. Then it was a matter of breaking through and driving the Germans out of France and Belgium. Today we want to gain 'objectives.' These objectives are from one to two miles beyond the old lines; between them lies the gloom of destruction. And this is the great offensive of the year 1917!

The new Russian government does not differ very much now from the old one of the Tzar. It suppresses newspapers, it institutes wholesale arrests among its opponents, it suppresses news, it has set up the gallows again, it shoots down soldiers who will not allow themselves to be driven into the firing line, just as in former times. If the ex-Czar only had as much wit as old Emperor Ferdinand
700 of Austria, he would be able to say something similar to what the former said when he heard of Solferino, viz: 'Yes, we could have done that, too.' Dictator Kerensky is really sitting between two chairs; he wishes the continuation of the war and must therefore win the cadets. They, however, make the condition that he get rid of the Social Democrats before they give their valuable services to their native country. That is to say, a few socialists would be tolerated in the ministry but only as an ornament; they would have to give up their connection with their parties and accept no instructions from them. Whereupon the Council of Workmen and Soldiers, with a cool smile, pointed out to Kerensky that it would not be very healthy for him to try and get rid of them—the Council. And so Kerensky remains in painful uncertainty. And he does not really need a ministry, as he is Dictator. Did it really pay to depose the Czar?

A dictator must have successes or it will soon be over with dictating. But Kerensky has nothing but failures. He has often traveled over the whole front, and surely used all his oratory, to persuade the soldiers to continue the war. The result, defeat in the North at Smorgen, bad defeat in the interior at Pinsk, collapse in Galicia and Bukowina. And to all appearances it is going to be worse. You can't carry a dog to the chase, you can't force the Russians to fight, if they don't want to. You can't make even Russians believe their

country is in danger when they have a continuous offer of peace. We are sorry for this Kerensky, but why did he undertake the impossible? He will probably destroy himself l the revolution.

He hopes for nothing more from Russia, exclaims the Chief of English General Staff, Maurice. So soon. Why it hasn't been g since the Allies announced rejuvenated revolutionary Russia uld make a brilliant name and save the day. And now! Now call is 'Samuel, (not Samiel, note for the compositor) help!' at is to say the American Uncle Sam. Until a short time ago y could give him time with his coming, but now it looks danger-. Now it is 'Immediately if not sooner.' It is a great question ether the Allies can hold out in the West until spring when the eat American army is expected to be there.

This is the way matters stand now. If, to round things off, we t in the additional facts that the English Workingmen's Party reatens to desert for the peace camp that the Entente socialists are ing to Stockholm, that Balfour has spit into Lansing's diplomatic up, and declared the foreign fabrication of a constitution for ermany as ludicrous; that the Italian Socialists have categorically clared to their government: 'No fourth winter of war,'—the result a picture which the pacifist can view with nothing but comfort.

02 "At Last Joyous News.

The solidarity for war in England and France is broken. The Holy Union' of parties in France is gone, the English workingmen bel against Lloyd George and the Tories, the Russian counter-volution throws its shadow before.

Whether the latter can be designated as 'joyous news,' it is prob-ble that all the readers of this paper will not agree. However, after little thought they will agree. First of all the thing must be clear. t must be settled whether the war shall be continued. So long as at remains in the balance, there can be no favorable conclusion to he revolution. Now the propertied classes are forcing the question. division of spirits or rather classes is now in progress. The reac-ionary members of the Duma dare to come forward, these fellows who licked the boots of the Czar. They say they are done with the roletariat scoundrels, who now rule Russia. That is but the ex-ernal sign that the counter revolution has quietly made great prog-ess. People of culture and wealth believe that they now may take p the fight. Its prelude was the great Cossack demonstration which ollowed the appointment of a Cossack general to be Commander of he troops of Petrograd. Now either the Duma will drive out the ouncil of Workingmen or vice versa. The revolution moves fast. But that is good. Good for Russia, good for the revolution, good for Europe.

703 In West Europe and in Italy, too, significant changes are likewise in progress. In Italy the so-called socialist party (there are still 'veneered' socialists among them) has from he beginning protested against the war. Now it is advancing to

attack the administration. Nemesis falls on rascal-in-chief Sonnino. The Italians have charged the Corso eleven times in vain. It has cost a million men. Two years ago they were 15 miles from Trieste, now they are 14 1-2. The Italian snail creeps more slowly than the English one. In the country extreme distress prevails. England has forced Italy to give troops for the Balkans and Palestine, otherwise she will give no more money. Hence calm on the Isonzo. Extreme consternation that Balfour did not even mention Italy in his speech on conditions of peace. It is hard to be sacrificed, says Madonna full of evil foreboding. They talk of a Giolitti-Turati ministry. Giolitti was the former dictator of Italy, who opposed the war. Turati is the most prominent of the socialists.

In France the socialists have slowly, very slowly, got on the right track. Now they are near an open break with the bourgeoisie. So far as the latter are concerned, the entrance of Caillaux proves that all is not well in their camp. Caillaux was against the war. Jules Guesde, a hardened conservative, is still trying to put on the brakes. He belongs to that class of people of whom Marx said to his friend Engels: 'You know I am no Marxist.' He will not succeed again. Old Ribot cries in despair: If we make peace now we won't get Alsace-Lorraine and begs them to persevere. He still has a
704 majority in the Chamber but the desertion of the socialists will be fatal to him.

Most important, however, are events in England. It depends principally on it whether peace is to be made. If it is unwilling to go on, this bloody game is at end. Now let us briefly fix chronologically how politics have been moving in England since the beginning of the war. Then the liberals were at the helm. They were not fighters, not even Grey was for the war. In the eyes of the Germans he is accounted as Mephistopheles, but he is worse than that, he is a weakling. He allowed himself, the whole party allowed itself, to be driven into something they did not want. After a little while, when the war did not progress, they halted. Lord Northcliffe, the English newspaper monopolist, jumped in. He is the real Mephistopheles in the tragedy. He led Faust-Lloyd George astray. He pushed Dame Martha Schwertlein-Asquith out into the garden and made love to the Tories. They are always ready to go into the arbor with a radical virgin and to draw her down to them. Lloyd George fell. The noble Lords were more pleasant and more indulgent company than the ragged munition workers.

The first task of Lord Northcliffe was performed. But even the Welshman could produce no results. The second was to bring in Uncle Sam. Northcliffe came here personally in order to take care of that. He succeeded and Northcliffe went home, but not without having bought 26 leading American newspapers. That was,
705 as is well known, openly asserted in Congress, but the investigation which was asked was refused. Then came the 'tumult' of the receptions to French, English, Italians, and Russians. That stirred things up for a while; not enough, however, to bring in 50,000 men for the regular army, but enough for the forcing through of the Conscription Bill. But 20,000 Americans cut no ice. A billion and

alf dollars are not to be despised, but Germans cannot be killed
n dollars. Therefore danger in delay. His Lordship must come
r a second time to present capital of the English and world em-
. From there he inspired the American press with incitements
ar mostly under the firm name, 'In Government Circles.' Then
volt broke out behind his back in old England. The labor party
elled. Henderson, the only feeling heart amidst the Tory masks,
son, Milner, Curzon, and Law in the great war council, became
ack-slider. The proletariat toyed with neutrals and even with
emy' socialists. Wants to go to Stockholm. Alas!
The declaration of the German Reichstag will not be regarded as
rap of paper, as is desired in Washington, but as an earnest proof
the desire for peace in the German people under acceptable condi-
ns. It has had its effect. Stockholm will carry it further, and
ckensen is evidently commander-in-chief in the Southeast. Joy-
s news."

6 "The Object of the War.

Allies Hold Important Conference in London.

merican Correspondent Claims to Have Guessed the Conclusions Already.

Appropriation of Portions of German and Austrian Territory Planned.

London, August 7.—In Downing Street, the seat of the British oreign Office, an allied conference is sitting to-day, from which im-ortant consequences are confidently expected. Those taking part n the discussions are Premiers Ribot of France, Sonnino of Italy, nd Paschitsch of Serbia, as well as representatives of the British nd Rumanian Governments. It is possible that important diplo-natic developments will occur in the course of the conferences.

The reformation of Kerensky's cabinet in Russia and the changes n important posts in the German Imperial Government and in Russia, will probably be considered in the conference and are giving ise here to various opinions.

In the change of Ministers in Berlin people here see a possible trengthening of Imperial Chancellor Michaelis through the ap-ointment of men who are in harmony with him as to the aims of the war. So far as the 'Liberalization' of Germany is con-707 cerned, the new appointments are considered of little im-portance.

As for Russia, it is here hoped that Premier Kerensky is now suc-essfully on the way to a rehabilitation of Russia. He has got through a new period of apparently complete disintegration, has sup-pressed anew the peace tendencies, that were springing up and now seems to be stronger than ever before.

According to the British opinion, the appointment of Dr. von Kuhlmann as German Secretary of State for Foreign Affairs, offers

doing, they could not bring about a peace according to these
the possibility for future negotiations with America which
could not say of his predecessor in office, Zimmerman, becaus
was the author of the note which attempted to stir up Mexico
Japan against the United States. The new head of the Ge
Foreign Ministry is considered a statesman who ought to be we
formed regarding American affairs and ideals.

The Imperial Chancellor, Dr. Michaelis, has, however, give
indication that he will deviate in the least from the military
gram of his predecessor, Von Bethmann Holweg, and it is to b
garded as certain that Secretary Kuhlmann agrees completely
the opinion of the new Imperial Chancellor.

Allied Dreams.

Washington, August 7.—The Allies have come to a com
agreement about the revising of the map of Europe after the
The outline of the peace aims of the entente countries was indic
in one of the local allied messages to the representative of the U
Press.

708 By means of taking away districts here and rectif
boundaries there, the allies plan a rearrangement w
would make for international peace in the future. While Gern
dreams of a Middle-Europe from the North Sea to Bagdad, u
Teutonic domination, the allies are united in this: that the
shall continue until this German dream has vanished.

The first point in the allied proposals is the withdrawal f
Belgium, and France, according to these plans, is to receive Al
Lorraine; Constantinople is to be internationalized and the Tur
hold on Europe loosened.

The Greek border is to be pushed northwards while Greece i
receive a few islands in the Mediterranean lying off its coasts.

Italy receives the Trentino and Trieste, as well as a rectificatio
its northern border and a little bit of territory on the opposite c
of the Adriatic. Groatia and Bohemia will be independent st
while Poland will be set up as an independent buffer state betw
Germany ad Russia. Furthermore, it is proposed to divide Aust
Hungary into two independent states.

The proposed 'adjustments' are not based on conquest but u
the determination that people are to live in states of their
nationalities.

Because of Germany's misdeeds, the allies do not think of retu
ing the German colonies in Africa. Thus run the te
709 of peace of the Allies. America has not agreed to all th
plans; the American Government says only: 'Let us b
Germany, and the boundaries will then take care of themselv

(This story of a correspondent of the United Press is natura
not to be taken seriously. No one doubts that the allies have s
a piratical design, but an impassable gulf yawns between this g
purpose and its carrying out. Even if the Allies had occupied ene
territory in the measure that the Central Powers have succeeded

tasies. The weaker the military position of the Allies gets the more they attempt to gloss over their failures by bragging.)

"Mr. Elihu Root is an old man and ought to be able to bridle his tongue. But he cannot, because he is boiling with rage, and this rage must come out. Mr. Root is raging because of the failure of his Russian mission. This failure is not to be denied. It is so apparent that not even an excuse for it can be given. The reason for it, among other things, lay in this: that a good many Russians have seen America with open eyes and had informed their countrymen what they thought of it. But that was for the most part a poor introduction for Root, Russell and Company. Wherever the Americans went, they always found that these American-Russians had been there first. They had said to the people: This America
710 is a money-bag republic; its common people have had no more to say there than the Russians up to this time in their own country; they are exploited there just as we are, and also shot down sometimes, so beware of the Americans, they bring us nothing good.

So spoke the American Russians. It does not matter whether it was true or false. The main thing is that the Russian Russians believed it and gave the Americans such a cold shoulder as is possible only in Russia. That is why Mr. Root is raging about the Russians in general and the Russians in New York in particular, and no less, or rather especially about the American Russians, that is to say about those of his country people who will not join him in blowing the war horn. He expressed his rage in a speech made last Wednesday, in which he said, among other things:

'There are people who are going about the streets of the City this evening, who ought to be brought here at sunrise to-morrow morning and shot for treason. They accomplish their work under false pretences; they represent themselves to be for our land, and they lie every day and in every word. They conceal themselves with a mantle of a plausible Americanism, and if we are competent and ripe for our freedom, we will find them out and get rid of them.'

'We' will get rid of them, to be sure that is easier than to get rid of the Huns, but 'we' have, it is to be hoped, not yet so completely exchanged roles with Russia that we should have become a
711 Czardom. In any case 'we' shall not let ourselves be driven upon the ram's horn and intimidated by Root. Whoever rails, is in the wrong—that is an old discovery. Mr. Root knows that the people whom he is baiting form the great majority of the population of the country, and this majority knows that Mr. Root is the attorney for Morgan, Schwab, Du Pont, Westinghouse, &c., and estimates him accordingly."

Jul- 4, c. 1, editorial:

"A War of the *Rick*.

We have been at war now for nearly two months. Two persons have already been killed in this war—American women, who were

killed by a piece of an alleged defective shell made in the year 18
That may not be correct. The investigation determined upon
Congress may throw light upon it. But the two women are de
that is certain; otherwise, nothing else particularly warlike
happened. A couple of American ships have been sunk, but t
came before the declaration of war. Furthermore, a number
American torpedoboat destroyers have been sent across, which
cording to repeated assurances of the English, have given a v
good account of themselves in fighting German submarines; howe
without this having been specifically stated. On the other hand,
American reported that the number of submarines destroyed
small.

Accordingly our war for the present is principally music of
future. The great majority of the American populat
712 hopes it will remain so. It assumes that the war will be o
before the United States have taken serious part there
The undeniable apathy of the people is based largely upon that f
They do not take it seriously. But not alone upon that fact.
delicious confession slipped out of the local 'Ledger' yesterday.
an editorial article it elaborates:

'Those who are engaged in the sale of Liberty Bonds meet
classes of citizens who from directly opposite points of view are
the opinion that the investment of funds in the bonds does not c
cern them. The one class which is inclined to find an envia
difference between themselves and those who are probably m
richly blessed with earthly goods than they themselves, brusqu
reject the importunity with the remark, 'let the rich buy the bon
It is their war.' The others who would not allow the least bitt
ness to be recognized in their bearing, seemed surprised at the p
sumption that they are to be partners of Uncle Sam and they a
why do not the capitalists, who usually invest their money in bon
subscribe the desired sum?'

The 'Ledger' would scarcely have made this matter the subject
an editorial if it were a question of isolated cases. It is to be
sumed, therefore, that the selling agents for the loan have report
a good many failures to the central offices. The loan will natura
be floated and probably be largely oversubscribed and th
713 are now working at high pressure to that end. It is a
relatively small in comparison with what the Europe
belligerent states have floated. It is also only the first loan; it w
not last long if the Allies are further supplied in the same manr
as heretofore, and the prospects of that are very good indeed. Ri
Uncle Sam is now in it, and must continue to throw good mon
after bad. Indeed the Messrs. Italians demand a half billion
themselves alone and in order to prove their right to it, they are n
once more sacrificing a hundred thousand men in vain upon t
Isonzo. The claim is supported, too, emphatically and repeated
every few days, by our jingo press which probably are working on
percentage basis.

The conception that this war is a war of the rich has doubtle
been widespread among the masses. It may not be dangerous

long as the war keeps the Platonic character mentioned above; it will be increased if the sons of the propertied classes should slip out of the selective conscription; if the exploitation of the masses should be continued by means of inflated prices of foodstuffs and if the government does not soon make plain in terse terms that are intelligible to the people, whether we are waging war to realize the Allies' program of conquest.

At last the government makes it known that it will soon publish its answer to Russia. As has been repeatedly emphasized up
714 to now we have not even been able to ascertain what Russia is really after. It may be easily imagined that it desires that the United States should unite with it, that the Allies should modify their war aims and open the way to peace. Russia for a clear and unambiguous answer and as to new Russia has made its own, the President's war aims: "Peace without Victory" and self determination of the population; it has a right to gain and receive the warmest support of the United States. An attitude of refusal on the part of the United States Government would only confirm, among the people, the conception that the war is not being waged for the cause of liberty but for special interests.

715 COMMONWEALTH OF PENNSYLVANIA:

Office of the Secretary of the Commonwealth.

Certificate.

To all to whom these presents shall come, Greeting:

I do hereby certify, That the following and hereunto attached is a full, true and correct copy of certificate of Incorporation of "Philadelphia Tageblatt Publishing Association," together with Letters Patent issued thereon; as the same appear of record in this office.

In testimony whereof, I have hereunto set my hand and caused the seal of the Secretary's office to be affixed at Harrisburg this Sixteenth day of August, A. D. 1915.

[SEAL.] WM. HERTZLER,
Deputy Secretary of the Commonwealth.

COMMONWEALTH OF PENNSYLVANIA,
City of Philadelphia:

We the undersigned citizens of the Commonwealth of Pennsylvania and residents of the city of Philadelphia, hereby certify:

I. That we intend to form a corporation to be called "Philadelphia Tageblatt Publishing Association."

II. That the intended corporation is formed for the following purpose, to wit: The publication of a daily paper in the German language in the city of Philadelphia, devoted to the interests

716 of the working classes, representing the leading ideas of socia
science, and to that end to do all printing and business in
cidental to the publication of a daily newspaper, and for these pur
poses to have, possess and enjoy all the rights, benefits and privileges
of the Act of Assembly approved of April 29th, 1874.

III. That the business is to be transacted — No. 50 North Seventh
Street in the city of Philadelphia.

IV. That the said corporation is to be perpetual.

V. That the names, residences of the subscribers and the number
of shares subscribed by each subscriber are as follows:

1. August Ruttman, 1005 Wood Street	31	Shares
2. Wilhelm Rackle, 308 Ludwig Street	21	"
3. Theodore Wentzel, 2029 Waterloo Street	20	"
4. Edward Rosenberger, 917 South 12th Street	50	"
5. Hermann Frank, 1337 Atmore Street	20	"
6. John Miller, 142 South 8th Street	50	"
7. Wilhelm Neunemann, Junior, 936 Ridge Road	50	"
8. Wilhelm G. Trolsch, 904 Ridge Road	10	"

all said residences of said subscribers being in the city of Philadel-
phia.

VI. The number of directors is fifteen and those elected for the
first year, all members of the said corporation, are as follows:

717 1. Jacob A. Duerr, President, 612 Brown Street.
2. Hermann Freitag, Vice President, 525 Columbia Ave.
3. Julius Hoffman, Financial Secretary, 2227 Redner Street.
4. Gustav A. Kirchner, Corresponding Secretary, 847 St. John St.
5. Carl Kupke, Treasurer, 860 North 12th Street.
6. William Neuenmann, 936-938 Ridge Road.
7. Ernst Lincke, 308 New Market Street.
8. Engelbert Gradel, 2019 Springett Street.
9. Julius Froelich, 453 Canton Street.
10. John Eppler, 1828 Wood Street.
11. August Holley, 417 Julianna Street.
12. Fred. E. Bolts, South East Corner of N. 5th & Vine Streets.
13. William Flamme, 2210 Howard Street.
14. Henry Guenther, 233 Wood Street.
15. Wilhelm Schmitz, 724 May Street.

all of the said city of Philadelphia.

VII. The amount of the capital stock is Six Thousand Two Hun-
dred and Fifty Dollars ($6,250.00-100), divided in Two Thousand
Five Hundred Shares (2,500 shares), each share of the par value of
Two Dollars and Fifty Cents ($2.50-100).

We also hereby certify that Carl Kupke has been elected the
Treasurer of the said "Philadelphia Tageblatt Publishing Associa-
tion," the said Carl Kupke residing at No. 860 North Twelfth Street
in the said city of Philadelphia and we further certify that ten per
centum of the capital stock thereof has been paid in cash to
718 the said Treasurer of the intended corporation, to wit: to the
said Carl Kupke.

In witness whereof we have hereunto set our hands and seals at Philadelphia this the thirteenth day of March one thousand eight hundred and seventy-eight.

AUGUST RUTTMANN. [SEAL.]
WILHELM RACKLE. [SEAL.]
THEODORE WENTZEL. [SEAL.]
EDWARD ROSENBERGER. [SEAL.]
HERMAN FRANK. [SEAL.]
JOHN MULLER. [SEAL.]
WILHELM NUENEMANN, JR. [SEAL.]
WILHELD G. FROELSCH. [SEAL.]

On the thirteenth day of March Anno Domini one thousand and eight hundred and seventy-eight, before me the subscriber the Recorder of Deeds for the County of Philadelphia, personally appeared the above named August Ruttmann, Wilhelm Rackle, Theodore Wentzel, Edward Rosenberger, Hermann Frank, John Miller, Wilhelm Nuenemann, Jr., and Wilhelm G. Froelsch and in due form of law acknowledged the above indenture to be their and each of their act and deed and desired the same might be recorded as such.

[SEAL.] JOS. K. FLETCHER,
Deputy Recorder.

STATE OF PENNSYLVANIA,
Philadelphia City & County, ss:

719 Personally appeared before me this Thirteenth day of March A. D. 1878, August Ruttmann, Wilhelm Nuenemann, Junior, and William G. Froelsch, who being duly affirmed according to law depose and say that the statements contained in the foregoing instrument are true.

AUGUST RUTTMANN.
WILHELM NUENEMANN, JR.
WILHELM G. FROELSCH.

Affirmed & subscribed before me this 13th day of March A. D. 1878.

[SEAL.] JOS. K. FLETCHER,
Deputy Recorder.

Constitution of the 'Philadelphia Tageblatt Publishing Association.'

Article I. Name.

The name of this corporation is Philadelphia Tageblatt Publishing Association.

Article II. Object.

The object of this corporation is the publication of a daily newspaper in the German language in the city of Philadelphia, devoted to the interests of the working classes representing the leading ideas of social science.

Article III. Capital.

The capital of the corporation is Six Thousand Two Hu
Fifty Dollars ($6,250 00-100) represented by Two Thou
720 Five Hundred Shares (2,500), each share of the par val
Two Dollars Fifty Cents ($2.50-100) with the reserved
ilege of increasing the said capital to the sum of Twenty Thou
Dollars ($20,000 00-100), the said increased capital to be repres
likewise by shares, each of the par value of Two Dollars and
Cents ($2.50-100) to be issued from time to time in accordance
a resolution of a general assembly of all the shareholders, calle
that purpose.

Article IV. Shares.

#1. The amount of shares subscribed has to be paid in w
three months of the time when the subscription was made.
#2. No person or corporation is permitted to have more
fifty shares in the corporation which shares are only to be transf
with the consent of the Board of Directors of the Philadelphia
blatt Publishing Association.
#3. The nominal amount of a share shall never bear more
five per cent interest when any dividend has to be declared.
#4. The shares commence to bear interest January 1st, 1878,
the payments of such interest or dividend will take place half ye
to wit, on the first of July and on the Second of January of e
year.

Article V. Officers.

The officers of the corporation shall be fifteen directors from w
said board of Directors shall be elected one president, one secre
and one treasurer by the said board of directors. There
721 also be elected five superintendents constituting a boar
superintendence.

Article VI. Duties of Officers.

#1. The Board of Directors shall appoint all employees, with
exception of the editors and determine their salaries.
#2. The Board of Directors shall supervise all business and w
necessary, consult the respective department and see to it that
employees discharge their duties and shall, in particular control
receipts and disbursements. All the financial relations between
corporation and the shareholders constitute also the business of
board of directors.
#3. The Board of Directors has the right of discharging ne
gent and unfaithful employees, with the exception of the edit
may however inform the Board of Superintendence of any neg
of duty on the part of editors. Any person affected by this provis

is, however, entitled to an appeal from the decision of the Board of Directors to the General Assembly of the shareholders.

#4. The Board of Directors has to submit a quarterly report to the Board of Superintendence for the information of the General Assembly of shareholders.

#5. The Board of Superintendence has the right of exercising supervisory power over the Board of Directors as well as over the whole business of the corporation.

#6. The Board of Superintendence or the individual members thereof have a right to attend the meetings of the Board of Directors.

722 #7. The Board of Superintendence has the right of suspending a member or members of the Board of Directors, of substituting others for such suspended member or members, but is obliged to report to the next General Assembly of the shareholders any change in the Board of Directors for approval.

Article VII. Editors.

#1. The appointment and dismissal of editors is the right of the Board of Superintendence with the advice and consent of the Board of Directors. Appointments and dismissals must be announced in the 'Philadelphia Tageblatt.'

#2. The Board of Superintendence as well as the Board of Directors are bound to instruct the editors concerning the policy to be pursued in the editorial columns of the 'Philadelphia Tageblatt.' This policy shall be only that of the Socialistic Labor Party of the United States of America. The 'Philadelphia Tageblatt' shall never be diverted from its object to-wit, to be a benefit to the laborers in general.

Article VIII. Treasurer.

#1. The Treasurer is a member of the Board of Directors and *and* has to give good security for the sum of Two Thousand Dollars ($2,000 00-100).

#2. It is the duty of the Treasurer to keep moneys safely and the accounts correctly and to pay only on orders issued by the Board of Directors.

#*2*. Any moneys above One Thousand Dollars in the hands of the Treasurer must be deposited in a reliable bank of un-
723 doubted first standing in the name of the Treasurer and one Director.

Article IX. Disposition of Funds.

#1. A third part of the net profits shall constitute the reserve fund.

#2. Two-thirds of the net profits shall be employed in the repurchase of the shares of this corporation.

#3. Any other net profits arising from any source not foreseen shall also become part of the reserve fund.

Article X. Reserve Fund.

The reserve fund shall consist *of*—
a. of the third of all net profits.
b. of donations.

Article XI. Funds from Other Sources.

#1. Net profits of any festival managed by the Association s
be kept separate.
#2. Such net profits coming from such extraordinary sou
shall first reach the sum of Three Thousand Dollars, when they s
be employed for the diffusion of scientific knowledge amongst la
ers by means of pamphlets or other publications.

Article XII. Meetings.

#1. The general assemblies of the shareholders shall take p
every second Monday for the months of January, April, July
October.
#2. Every member of the corporation is entitled to one
No number of shares can give to a share holder more
724 one vote.

Article XIII. Elections.

#1. The Board of Directors shall be elected by the membe
the corporation at a General Assembly.
#2. Every first Monday in January and July five of the mem
of the Board of Directors holding the oldest commissions shall r
and their positions be filled by the General Assembly of the mem
of the corporation.
#3. The Board of Directors shall elect one member thereof P
dent, another member thereof Secretary, and another mem
thereof Treasurer.
#4. The Board of Superintendence shall be elected for the
of one year by the General Assembly of the members of the corp
tion at the meeting on the second Monday or April of each

Article XIV. Duration of the Corporation.

#1. Three members of the corporation are sufficient to hol
the existence of the corporation.
#2. The corporation cannot be dissolved as long as there
three corporators opposed to its dissolution.

Article XV. Amendments to the Constitution.

#1. Article VII of this Constitution shall not be altered.
#2. Any other amendment may be proposed at a General
sembly of the shareholders.

#3. Such amendment can only be submitted to a vote at a subsequent meeting.

#4. Two thirds of the members of the corporation are necessary to adopt such amendment.

Article XVI. By-Laws.

#1. By-Laws shall be enacted for the government of the corporation not contained in this Constitution.

#2. Two-thirds of the members present and voting shall be necessary for the adoption of a by-law.

#3. Not less than twenty-five members of the corporation are necessary to constitute a meeting for the purpose of enacting or amending by-laws.

Executive Chamber,

Harrisburg, April 22d, 1878.

Hon. M. S. Quay, Secretary of the Commonwealth:

Having examined the foregoing application and found it to be in proper form and within the purposes of the class of corporations specified in section two of the act entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29th, A. D. 1874, I hereby approve the same, and direct that Letters Patent issue according to law.

J. F. HARTRANFT, *Governor.*

Secretary's Office.

PENNSYLVANIA, *ss:*

Enrolled in Charter Book No. 12, Page 36 &c.

Witness my Hand and Seal of Office at Harrisburg, this twenty-second day of April, A. D. 1878.

[SEAL.]

M. S. QUAY,
Secretary of the Commonwealth.

PENNSYLVANIA, *ss:*

J. F. HARTRANFT. [SEAL.]

In the name and by the authority of the Commonwealth of Pennsylvania John F. Hartranft, Governor of the said Commonwealth, to all to whom these Presents shall come sends Greeting:

Whereas, In and by an act of the General Assembly of the Commonwealth of Pennsylvania, entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four, the Governor of this Commonwealth is authorized and required to issue Letters Patent to all corporations formed under the

provisions of said act, embraced within the second class named therein.

727 And whereas, The stipulations, conditions and things directed to be performed in said recited act of the General Assembly have been fully complied with by the Philadelphia Tageblatt Publishing Association, formed under the provisions of said recited act. The business of said corporation is to be transacted in the city of Philadelphia, County of Philadelphia, State of Pennsylvania.

Now know ye, That in pursuance of the power and authority to me given by law, I, John F. Hartranft, Governor of the said Commonwealth, do by these presents which I have caused to be made patent and sealed with the Great Seal of the State, create and erect the subscribers to the stock of the said corporation, for the number of shares by them subscribed to wit:

August Kuttmann	31
Wilhelm Rackle	21
Theodore Wentzel	20
Edward Rosenberger	50
Hermann Frank	20
John Miller	50
Wilhelm Nuenemann	50
Wilhelm G. Frolsch	10

Amounting in the whole to two hundred and fifty-two shares.

And also those who may thereafter become subscribers or holders of the stock of said corporation, into one body politic

728-29 and corporate, in deed and in law, by the name, style and title of the Philadelphia Tageblatt Publishing Association, and by the said name, the said subscribers shall have perpetual succession and all the privileges and franchises incident to a corporation. And the said subscribers, and those who shall afterwards subscribe to the stock of the said corporation, their successors and assigns, are generally to be invested with all the rights, powers and privileges, with full force and effect, and subject to all the duties, requisites and restrictions specified and enjoined in and by the said act of the General Assembly and all other laws of this Commonwealth.

Given under my Hand and the Great Seal of the State, at Harrisburg, this twenty-second day of April in the year of our Lord one thousand eight hundred and seventy-eight and of the Commonwealth the one hundred and second.

By the Governor:

M. S. QUAY,
Secretary of the Commonwealth.

Recorded in the office for Recording of Deeds in and for the City and County of Philadelphia, in Charter Book No. 52, page 353 &c.

Witness my hand and seal of Office this eighteenth day of August D. 1915.

[SEAL.]

____ ____,

Deputy Recorder of Deeds.

Fifth Day.

UNITED STATES

vs.

SCHAEFER et al.

Philadelphia, Pa.,

Friday, September 27, 1918.

Charge of the Court.

Hon. Oliver B. Dickinson, J.

GENTLEMEN OF THE JURY: The features which gives importance this case are so prominent in themselves that I am sure they cannot ve escaped your attention. I will, therefore, pass them without ther comment. There is that, however, in those very features— ich brings a challenge to our sense of duty and to our sense of tice. The duty of the enforcement of any law is one which makes trong call upon us, because we are here for that very purpose, but at call is never so loud as to over-ride the obligation of the other ll, which is to make sure that no man is found guilty of a crime less the evidence points to his guilt with the degree of certainty ich the law requires.

There is an admonition, the frequent quotation of which has made sound common-place, but which at the same time is of value to us w. It is that we should keep our heads though all about us are ing theirs, and, perhaps, blaming it on us.

I do not know of any better way of impressing a jury with a full sense of their responsibility than by calling their attention, as I am very fond of doing, to the fact that they form a part and a very important part in this great experiment of self-vernment. No people is fit to be self-governed whose juries, chosen om among the great body of the people, cannot give due considera-on to cases of this kind, and who cannot give to any defendant a ir and impartial trial, and render a just verdict.

I know of no greater service an American citizen can perform for s country than to manifest by his attitude in cases of this kind that e are a people who are governed by law, and who follow unswerv-gly that sense of justice which we should follow.

Calling up just that spirit of justice, and breathing its very atmos-here, let us go to a consideration of the real merits of this case.

I think, perhaps, it would be helpful to you to take up the several uestions which will naturally suggest themselves to your minds in

some such order as this: Get clearly and firmly into your mind what the law is with the infraction of which these defendants are charged. Then, take up the charges themselves, and get again clearly in your mind in what way and in what respect the defendants are charged with having violated the law. Then, take up the evidence, the proofs of the case, to determine whether or not the charge as made is well or is ill-founded.

732 The law is contained in an Act of Congress, which has been referred to you, and the pertinent sections of which have been read, but as they are short, I will take the liberty of refreshing your memory by re-reading them.

This Act is commonly known as the Espionage Act, and this law as the Espionage Law. One of the sections, which is the third section—the pertinent features of it, I will not trouble you with anything else,—reads as follows:

"Sec. 3. Whoever, when the United States is at war, shall wilfully make or convey false reports or false statements with intent to interfere with the operation or success of the Military or Naval forces of the United States, or to promote the success of its enemies and whoever, when the United States is at war, shall wilfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty, in the Military or Naval forces of the United States, or shall wilfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States,"

shall be guilty of a crime, and incur the penalties which the Act of Congress prescribes.

There is an additional section which would, indeed, have been the law without its incorporation here, because we had a law of substantially the same intent and purpose before the enactment of

733 this law, but probably for greater clearness it was re-inserted under Section 4, as follows:

"Sec. 4. If two or more persons conspire to violate the provisions of Sections two or three of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished,"

and so forth.

There you have the law. Let us pause here to get into our minds what the general thought and the general purpose is behind the enactment of it, because that will enable us to gather the real meaning and the real spirit of the law itself.

You will observe that the law applies only when we are in a state of war, in times of war, and that its general purpose is to protect, to preserve, rather, our military strength and efficiency, to protect ourselves against anything which would promote the success of our enemies by undermining our morale, lessening our will to win, or, as it is commonly expressed, our will to conquer, interfering with our military strength, by creating divisions among our people, hampering our military organization by promoting insubordination among

ps, or obstructing enlistments or enrollments. Bear in mind, is to prohibit these things against even the possibility of the langerous consequences which may follow.

Of course, gentlemen, in giving you the statement of the aw which I am now about to give you, I am only attempting ey to you the general thought and the general purpose. I attempting to give you any technically accurate statement rovisions of this act. You get that from the language of the f which I quoted in your hearing, and to which I refer you, I inadvertently omit any of the features of this act, you will led to supply them from your recollection of the verbiage of of Congress.

of the things which is prohibited is the making of false re- Another is, you will observe, causing insubordination and er things enumerated in the act. Another is obstructing ents, and under the fourth section we have the thought of a acy which you will see is, while in a sense the same offense, a distinct offense; that is to say, something may be made an against the law, a crime, and it may be defined in the law. ation of it is an offense against the law itself. Then, it is d that a conspiracy to commit an offense against that law, or these laws, shall become a distinct and separate offense in So that you have the two thoughts; the doing of the thing, e conspiracy to do the thing, accompanied, as you will here- arn, with something done by one or more of the conspirators nature of what is called an overt act.

You will observe that what is in this Act suggests the thought of treason, and something has been said about that, and the thought may be in your minds. It may perhaps, be explain just what the distinction is.

se acts which are prohibited are treasonable in the sense in that word is used, in the common speech of the people. In- they may constitute legal treason as defined in some jurisdic- but they are not treason against the United States, for the reason that there is a provision in our constitution, (which, rse, the Acts of Congress follow), that treason against the l States,—you will observe it does not say "treason generally," eason against the United States shall consist only in making on them, or in adhering to their enemies, giving them aid and rt, and there is another provision to the effect that no person e convicted of the crime of treason unless there are two wit- to the same overt act, making, as you will see, it perfectly hat mere words, whether published or not, as long as they are words, do not constitute the crime of treason, but they must be uttered and published under such circumstances as to become or acts in themselves, as "words" may be. So that words, un- here is something to which they may attach and unless irect, natural, and reasonably to be expected consequences m would be to give aid and comfort to the enemy, do not con- e the crime of treason. Every man will observe, however, that even mere words may be fraught with consequences which,

736 although too remote to constitute the crime of treason, may nevertheless be words which are fraught with most awful consequences and possibilities of evil, and, therefore, it is properly within the province of the law to prohibit, under the circumstances which the law may define, and make it a crime even to utter them. In substance, that is what this law does. Congress could not call some mere words treason, because the Constitution prohibits it, but there is no constitutional limitation on the power of Congress to declare those things a crime against the law which Congress has done in this Act to which I have adverted.

Having that thought about what the law is, let us go to the second proposition. What is the charge against these defendants? In what way is it said that they have violated this law? The charge is contained in what is called the indictment. It tells you, in more or less technical, legal verbiage, what the charge is. This particular indictment is made up of nine of what are called counts, each one of which sets forth an offence in itself, or may set forth what is really the same offence before stated in a different way, so as to meet any phase of the evidence which it is anticipated may be presented. The general charges covered by this indictment are three, the false reports charge, the obstructing enlistment charge, and the
737 conspiracy charge. It contains, as I have said, nine counts.

Count 1 makes the false report charge, and it gives you thirteen instances of such false statements or false reports. Counts from two to four, inclusive, make the general charge of obstructing enlistment, and each one of them, that is, each count, gives one instance of a publication which is averred to be such obstruction. Counts from five to eight, both inclusive, make the general charge of false reports, giving in like manner one instance in connection with each count, and Count nine is the conspiracy count, which charges these defendants with a conspiracy to violate three of the provisions of this act. One is the provision against making false reports, another the provision against inciting insubordination, and the other the provision against obstructing enlistment.

You may take up these several charges of offences in any order that you please. We may take them up now by first calling your attention to this question of the making of the false reports. You will observe that there must be first the making, which is here through the publication. There must have been the publication as a fact in this case for you to pass upon, and in connection with that you would find—I will call your attention to this feature of it later, but ordinarily you would find whom of the defendants were connected with that publication.

I would say to you, in that connection, that anyone who
738 participated in it, any one who had a part or share in it, could be found to have been guilty of that part of the act which constitutes this crime of making these false reports in the form of their publication. You will observe that in the Act there is another finding. Many of these are practically more or less, formal, but, nevertheless, they are in the Act—a finding that we

t the time in a state of war. Another ingredient is that the
s must have been false.
me pause here to state to you that that idea of falsity conveys
ought of something more than inaccuracy. It involves the
ht in itself of an intentional purpose to convey a wrong im-
on. In other words, a man may make a statement which is
to be inaccurate, and in that sense untrue, and yet it might
well be that nobody would say or could say that the statement
ade by him is false. You get the thought there. Another
to be found in this Act, and perhaps your especial attention
e directed to this feature of it, is that the reports must have
made wilfully with the intent, which has been so often quoted
ur hearing, to promote the success of the enemies of the United
s, and the other is wilfully obstructing recruiting and enlist-
service. Now, that word "wilfully" often conveys to our minds
ought of "wile" and also of "will," the will that the thing shall
ne which is done. In this law it conveys that thought, that
the act was done with a conscious knowledge upon the part of
the actor that he was doing it, not done inadvertently or
accident-ly, but done with the conscious knowledge that he
loing it, and with intent to do it.
ith respect to intent, to promote the success of our enemies. Let
istinguish here between "intent" and "motive" in the sense of
thing which moves a person to do an act. It is conceivable—
ed there has been some evidence of that actual condition here—
a person without any attitude of mind of friendliness to the
ıy or of enmity to us might do something with the purpose and
ıt to promote the success of the enemy, and his motive for doing
ight be, for illustration, a mercenary motive. He might not do
tuated by the motive that he wished to promote the success of the
ny. His real motive, might be what I have characterized as a
enary one, the desire to make some money out of the act, but if
ntent was to promote the success of the enemy, the motive would
excuse him, and, indeed, such a motive as I have instanced would
regarded by most men ethically, at least, as an aggra-
on of the offense. And so with respect to any other motive which
ht actuate a man. It is imaginable, although it is difficult to
eive that a man would be in such a state of mind, but, neverthe-
it is imaginable that a man might be *do* devoted, for illustration,
to the doctrine of non-resistance as that he might believe
that it was his duty, and the duty of the Nation to which he
belonged, to offer no resistance to any injury or any indignity
ever great which might be imposed upon him, and influenced
a motive of that kind, he might do an act, intending to promote
success of the enemy by bringing about a lack of preparation
he part of ourselves.
What we are concerned with is that intent, and not the motive
ch sets the act in motion as distinguished from the intent.
With respect to the obstruction of enlistment, you will observe that
Act of Congress says "obstruct." It does not say "stop," and
struct" is anything which interferes with, which hampers, which

makes more difficult, the work of enlistment. "Obstruct" conve
to us the thought of presenting an obstacle, but it does not mean th
the obstacle necessarily is an insurmountable one. It does n
measure its proportions as to whether it is great or whether it is sma
The thought conveyed is the wilful obstruction of the enlistme

You come to the idea in this conspiracy count. The word "co
spiracy" conveys the thought of acting together, of a concert
action. It does not, of course, mean that there should have been
formal agreement among the parties, a verbal agreement, eith
oral or written, that it take that form. That is not the thought
all. But the thought is that they are acting together in pu
741 suit of a common purpose, and you gather that not fro
proof necessarily that they met together and made a form
agreement to that effect—of course, if you had that proof, that wou
be very satisfactory—but you are permitted to gather it from wh
they did, and to draw the inference, if you are so impressed with
that they did have this concert of action from what they did. F
instance, you go to any of our athletic fields, and you see a footb
game in progress, and you see that eleven men are arrayed on t
one side and eleven men are arrayed upon the other, and you noti
that, although each one of those men is engaged in some individu
effort, it is not long before you discover that they are also acti
together in effecting a common purpose, and the thought which
really conveyed is that thought conveyed by the expression whi
applies to athletic matters, "team work," the thought of acti
together in accord.

This conspiracy charge goes a little farther than the precedi
eight counts, because it charges a conspiracy to do one or more
three things; to make false reports, to obstruct enlistment, to whi
I have referred, and which are the subject matter of the oth
counts, but included along with the others is a charge of
conspiracy to cause insubordination. If you find that a co
spiracy existed for the purpose of effecting the commission of a
one of those three crimes, (because each and every one
742 them is a crime against the United States), your verdict m
follow your judgments in that respect, provided that t
conspiracy has been followed by one or more of the conspirato
having done something to effect the object of the conspiracy.

Two or more people may conspire together for the purpose of co
mitting an offense against the law. If they stop there, that does n
make out the crime of conspiracy. The law is more merciful th
that. It gives them what is called locus penitentia, a place for r
pentance, and if before anything is done by any one of them
furtherance of the conspiracy, they withdraw from it, the matt
drops, and the charge of conspiracy has ( ) been made out, but
after having this understanding after each one of them being willi
to act together in furtherance of this purpose, if they, or anyone
them, do some act in furtherance of the conspiracy, then the crim
is made out.

This conspiracy charge enumerates thirteen different acts as amon
those which were committed by these defendants, some of them bei

the publication of articles, some of the acts being the payment of postage, which would be in furtherance of the publication of the articles, and making up all together thirteen of them. If anyone of those overt acts was committed by the defendants, the charge is made out.

In determining this question, (and I say again that I have not attempted to give you a technically accurate enumeration of
743 everything which is in this Act, I refer you again to the language of the act to make it complete, if I have omitted anything), but in passing upon this question of falsity and in passing upon this question of intent and in passing upon, of course, the question of whether or not we are at war, you are permitted to use your general knowledge. I will withdraw the reference to "intent," but in passing upon the question of the falsity of these publications, in passing upon the question of whether we are at war, and in passing upon any other questions which are in like manner a matter of public knowledge and of general information, you have the right to call upon the fund of general information which is in your keeping.

Upon the question of intent, you are to find that, so far as this case is concerned, from all the facts and circumstances which make up the full surroundings of the case, and more particularly and especially the character of the articles themselves.

No man is adroit enough, or if such adroitness ever existed, it would be certainly remarkable, to sit down, and pen an article, or be a party to the publication of an article, and have it disseminated, unless there is that in the article which indicates the intent and purpose with which he did it. And if these articles disclose to you an evident—I will put it that way, because under the facts of this case you may determine this question in that way—if the probable, if the possible, even, effect of those articles would be the effect
744 of promoting the success of the enemy, and there is nothing in the character of the publication or in its surroundings to indicate the thought that the man who wrote it or the man who published it intended other than that the natural consequences should follow, you would be justified in finding that the intent existed.

Upon the question of publication. You have the right to take that up in any order which seems proper to your mind. There was a publication. It necessarily follows that someone was concerned in that publication and the actors in it. You have been given evidence here as to the official relations of the defendants to this publication, what their duties were, what those duties involved. You know that this publication issued from a certain place and from a certain office, and by the process of elimination you have been given aid in drawing an inference as to the part of each in the publication, and in addition to that you have now in the case the admissions made by the several defendants themselves in their testimony.

Taking all those things into consideration you will pass upon these questions, omitting for the present the perfectly obvious ones which will occur to all of you, but getting right down to the meat

of the case, the question of who was concerned in the publication and particularly the intent, the wilfulness of the publications, and the intent to do those things, to which I have adverted, and which the law forbids.

345 I do not intend to go over the evidence in the case, because it has been very fully and very ably discussed in your hearing and it would be a useless waste of your time for me to do so. You take up that evidence and dispose of the case, but in disposing of it and in considering it, you are to consider it and dispose of it in the light of certain general rules which the law imposes upon jurors. One of them is that which has been referred to as the presumption of innocence. It is made the duty of every trial judge to call them to the attention of a jury, not because they are unacquainted with the doctrines, but to make sure that they have those doctrines in mind when they are disposing of the case. One is the doctrine which is referred to as the presumption of innocence, or, as it is sometimes phrased, that every person is presumed to be innocent until he is proven to be guilty. Perhaps the real thought could be better conveyed to your minds by the negative expression,—no man is presumed to be guilty. He is never called upon to prove his innocence. The obligation is the other way. The United States must prove the facts which justify you in drawing the inference of guilt. How do they prove it? They prove it by offering evidence before you, by calling witnesses to give testimony, and after that testimony has been given and after that evidence has been introduced, if it is credible, and conveys to your minds the conviction of its truth, and in your judgment justifies you in drawing the inference of guilt, then the proof

746 which the United States is called upon to furnish is forthcoming, and this doctrine of the law has been met.

There is also the other thought conveyed by the phrase "reasonable doubt," and every trial judge is required to explain to the jury exactly what is mean by that. It has been so fairly defined to you by counsel in the case that it is really unnecessary for me to do anything more than direct your attention to it. You will observe that it is not "doubt,"—"every doubt." There is no requirement that verdicts in a case be certain beyond the possibility of mistakes or error. A conviction of that kind is unattainable. It is not that there possibly may have been a mistake made, that kind of a doubt, but it is precisely what the expression states, "reasonable doubt." If a doubt is reasonable it rests upon something, and whenever a question of doubt arises then you ask yourselves the question, "why should we doubt? What is there upon which the doubt can be based?" Then you examine into that foundation, and if after your examination, the doubt still remains, that then is the reasonable doubt to the benefit of which every defendant, (and of course these defendants,) is entitled.

There is another element in the case which the law makes evidence, and which, without having any desire to tire you in the

747 matter by referring to these things which are perfectly obvious, but I am referring to them because the requirement of the law is that they shall be called to the attention of the jury. That is evidence of good character.

As has been truly said to you by counsel in this case on both sides, at is commonly called good character evidence, really more accurately speaking evidence of previous good reputation, is substantive, irmative evidence in favor of a defendant on whose behalf it is ered. It is made evidence in the case. You want to understand ecisely what bearing it has. It is not offered as any answer to the arge of crime. It is not offered as an excuse for the commission a crime. Good reputation or good character evidence is not evince for any such purpose as that, as a defence to the charge in that nse. It is this, that when you are considering the question of nether or not a defendant is guilty, then this good reputation or od character evidence enters into the case, and is to be given its ie weight along with all the other evidence in the case. To illusate: If the evidence against a man pointed undoubtedly and unistakably to his guilt, and he had committed the crime charged gainst him, he might produce evidence of the very best reputation hich any man could have sustained, indeed, you might be convinced at he was a man of the best type of character, but if the evidence satisfied you that he had committed the crime, and you had
48 no reasonable doubt about it, it would be your duty to convict, notwithstanding that he had previously sustained a good eputation. You will bear in mind what has been said to you, that he most hardened criminal in the world at one time committed his rst crime, but if a man were before you charged with a certain kind f an offense, which he denied, or indeed without his denial, if he howed to your satisfaction that he was a type or character of man whom you could not believe would commit a crime of that kind, or which would have in any way a bearing upon the question of, did he ommit the crime, then good character evidence would have a bearng and a very important evidence in the case. It is, therefore, evidence upon the question as to whether or not these defndants are guilty of the offense with which they are charged, and you should weigh it as you weigh all other evidence in the case. You are to consider it as you consider any other kind of evidence, the nature of the charge, the good character that has been indicated by the evidence of good reputation, and determine for yourselves what bearing it has, to what extent it bears, and give it due weight upon the question of the guilt or innocence of the defendants in this case.

Gentlemen, that is all that I have to say to you in the case except to give you some formal directions as to the form of your verdict.

749 Ordinarily it is within the power of a jury to find what is called a general verdict, so that when the question is asked you what you say in a given case, you may answer "guilty" or "not guilty," and, of course, that power belongs to you in this case. You may say that with respect to one or more or any of these defendants. I am not referring now to the ninth count. You have it in your power to say that with respect to anyone or more of these defendants. That is to say, that you find one, naming him, "guilty," and "not guilty" as to all of the others, or one, naming him, "guilty," or two, naming them, "guilty," or one, naming him, you find

"guilty," and "not guilty" as to those whom you do not find to b guilty. But inasmuch as counsel for the United States, the Di trict Attorney, officially representing the United States, has said t you that he does not ask you for a judgment of conviction as t specs counts one to eight inclusive so far as affects Vogel, Schaef and Lemke (and I wish to be corrected if I misunderstood him), course, in view of that, you would be justified in considering coun one to eight with respect to the other two defendants, Werner an Darkow, and you would be justified, if it meets the approval your judgments, in finding a verdict of "not guilty" as to Vog Schaefer and Lemke as to those counts.

With respect to the other two defendants, Werner and De
750 kow, the United States submits for your consideration all th evidence in this case as justifying you to find a verdict "guilty" against them upon all of those counts. You have it i your power to discriminate there, of finding a verdict of "guilty as to one or more, and "not guilty" as to one or more, and, of cours it goes without saying, because that is your duty, if the evidence persuades you, to find them "not guilty." Of course, you will n find them "guilty" unless the strength of your conviction is that one beyond reasonable doubt.

With respect to count nine, you may do the same thing, follow th same course, with this exception, that you must find at least two t have been guilty of the charge of conspiracy. You cannot convi one of conspiracy, for the very simple reason that it would be a absurdity to find that a man had conspired with himself.

You may, as to this count consider, under the evidence, the proof of the guilt beyond a reasonable doubt, of any two or more of the defendants, and render your verdict accordingly.

You may take the case and dispose of it.

I understand, as you will be required to keep together, that th authorities have made provision for you to take your lunch together where you will be undisturbed by the presence of anyone else.

You may take the case and dispose of it.

751 Mr. Gray: If your Honor pleases, I ask your Honor t instruct the jury with respect to the first count in the Bill o Indictment, that before they can convict any of the defendants they must find not only what you have instructed them with reference t that defendant, but that the article alleged to have been published was false as charged in the indictment, in that it differed from the original report as set forth in the indictment. In other words, that they cannot convict them unless they find the charge as laid in the indictment to be so.

The Court: Gentlemen of the jury, perhaps it might be well for me to detain you just a moment upon a discussion of that thought.

Of course, it is true that in the trial of any case a man cannot be convicted of any other offense than the offense with which he is then charged, and, of course, your verdict means that he is guilty of the offense charged. That is perfectly clear. But in considering this charge I instruct you that you are permitted to go to its real meaning, its real substance and real effect. That is, that these pub-

ations were false, that they were false in the respects which have
en outlined to you by counsel. "Falsity" implies the thought
ich I expressed to you in my general charge. It really expresses
ore than that, because "falsity" may exist in telling the truth if
the party who makes the true statement tells only half the
2 truth. There is a great deal in the old adage that the most
dangerous kind of a lie is half of the truth, or the truth half
ld, or a statement which is part truth and part lie. It is the sub-
antial thing which you are to consider.

The real offense with which these defendants are charged is in
utting out these false statements. They received them from a
ource. That source purported to be the report of a despatch, and
e evidence in this case would seem to direct your minds in at least
me of these instances, perhaps in many of them, to just where the
eport of the despatch appeared. They took that report as it came
them, and the charge is, in plain words, that they garbled it,
metimes by adding something to it and sometimes by leaving
hings out and sometimes by a change of the words. But the sub-
tantial thing which you are to pass upon is, was the report or state-
ent that they put out false? Was it wilfully and knowingly false?
Was it put out thus falsified with the intent to promote the success
f the enemies of the United States?

Mr. Gray: But, if your Honor pleases, the thought that I meant
o convey I do not think your Honor has touched upon, and that is
hat each sub-head of the first count, and the first count in itself
harges the falsity to be in the doing of a particular thing, whether
hat thing was an omission or a change or an addition, and what I
ask you to say to the jury is——

753 The Court: I think I catch your point. I do not care to
discuss it, but if you have no objection to my stating your
point in my own way, I will. I understand that you are raising the
point that here are certain despatches, original despatches, which
manated from certain authorized sources, and that this indictment
charges these defendants with a falsification of those despatches, and
that that is the thing this jury must find.

Mr. Gray: That is correct, sir. That is part of it.

The Court: I decline to so charge the jury.

Mr. Gray: Will your Honor grant me an exception?

The Court: I will allow an exception to the defendants.

(Exception noted for the defendants, individually and jointly, by direction of the court.)

Mr. Gray: My point went a little farther than that. That is, that they must find falsification, if it was falsification, in the manner alleged in the indictment. In other words, that is the falsification that they are to determine, and I intended to follow that up, and I will join it here, in asking your Honor to say to the jury that in cases in which the indictment charges the omission of anything, and no proof has been offered to show any omission, they have no right to consider the allegation in the indictment, which of course, follows, ipso facto as proof of the charges themselves. I mean to say

that in one or two of those newspaper articles they charge omissio
of things, and the indictment set forth the things that ar
754 supposed to be omitted in the indictment, but there is n
evidence of the correctness of them.

The Court: Of course, gentlemen of the jury, you are not consider
ing the charge as proof. A charge proves nothing except the fac
that a man is charged with crime, and it means nothing except tha
the official bodies connected with the administration of justic
deemed the case to be one to be submitted to you as a petit jury, t
determine the truth or falsity of the charges, and you are to d
that, of course, by looking to the proofs, and as I have already sai
to you, and as your own common sense and sense of justice woul
indicate to you, I am sure, you must find those proofs in the evidence
The United States must bring home the proof of the charges as made
and they must bring it home by submitting to you evidence whic
carries to your minds a conviction of the truth of the charge, an
carries it with the degree of certainty which is characterized by th
expression "beyond a reasonable doubt."

Mr. Gray: Will your Honor give me an exception to that portio
of your charge in speaking of the law, to this effect, "to protect our
selves against anything," and so on?

(Exception noted for the defendants, individually and jointly
as requested, by direction of the court.)

Mr. Gray: I also ask for an exception to that portion of you
charge to the effect that "the object of the law is to prohibi
755 these things, even against the possibility of their happening,
and so on.

(Exception noted for the defendants, individually and jointly
as requested, by direction of the court.)

The Court: Gentlemen of the jury, I thought I made that pe
fectly clear to you, but I do not want to have any doubt about i
I was speaking, as I said before, with no thought of giving you th
technically accurate verbiage of the law.

One of the best ways to understand a law is to get the general pu
pose of its enactment. That is one of the things we are always pe
mitted to do, and it is a very sensible process of thought to do s
I said to you that the general purpose of this law evidently was t
prohibit the doing of things which were fraught with possibilitie
Although that was the general purpose, when Congress came to d
clare what was criminal, of course, you are confined to the thing
which they have enacted to be criminal, and it is not sufficient tha
that be within merely the general purpose of the law. In othe
words, if there are two things which are within the general purpos
of the law, and Congress prohibits one, but does not prohibit th
other, you cannot find a man guilty of an infraction of the law u
less he has done the thing which was prohibited. You cannot co
vict him because he had done a thing which was not prohibited
So that that makes it perfectly clear to you.

Mr. Gray: I ask for an exception to that portion of your
756 Honor's charge concerning the law of treason as having, according to my view, no place in this charge. Not for any other reason.

(Exception noted for the defendants as requested, individually and jointly, by direction of the court.)

The Court: As I have said, it has no place but it might be in the minds of the jury, and I wanted them to understand the distinction between the two offenses.

Mr. Gray: Your Honor inadvertently said, and I want to have it corrected, that Count No. 1 "gives you thirteen instances of such false reports." You undoubtedly meant to say to the jury, and I ask you now to say so, that Count 1 charge- thirteen instances as being false reports.

Mr. Roberts: What his Honor said was thirteen instances of overt acts. Not false reports.

Mr. Gray: I took down exactly what his Honor said. I am asking you to correct it because I know it was an inadvertance.

The Court: Mr. Gray is right. I referred also to false reports. If I stated it as you put it it was an inadvertance. I said it gives thirteen instances.

Of course that means, gentlemen, that it sets forth thirteen instances as to which the United States makes this charge. Bear in mind all the time that that is nothing but the charge. It is necessary for you to understand what the charge is before you can pass upon its truth. But, of course, you are not to assume that it
757 is true from the mere fact that it is charged.

Mr. Gray: Your Honor inadvertently said to the jury—speaking of the conspiracy charge—"if after entering into the agreement, nothing else was done, the matter would drop." What you undoubtedly intended to say was that "the charge is not made out," but you said "the charge is made out."

The Court: If I said that, of course that was an inadvertence.

Mr. Gray: My duty is to have it corrected now.

The Court: Let me correct that. What I had in mind was, and what I thought I had said to you was this, that to make out a conspiracy charge, two things are necessary. I think I made that clear. One is that the defendants must have this understanding of acting together, what I characterized as the element of team work, that that must be present, and that fact must exist. If that is all, the crime of conspiracy is not made out, but it must be followed up by a second thing, and the second thing is that one or more of the conspirators must do some act to effect the object of the conspiracy. That is the overt act. You must have both of those elements present before you can convict of the crime of conspiracy. The indictment sets forth thirteen of what I say to you are charged, charged to be overt acts. It is for you to pass upon whether or not they were, in fact and in truth, committed.

758–59 Mr. Gray: I ask for an exception to that portion of your Honor's charge with reference to intent and motive.

(Exception noted for the defendants, as requested, individually and jointly, by direction of the court.)

Mr. Gray: I ask for an exception to that portion of your Honor's charge in which you said they were to find intent from all the facts surrounding the case, and more especially and particularly from the articles in question, following it with the statement that no man could be adroit enough to hide his intent in the articles, and if they thought the probability or the possibility of the effect of the articles was to have the effect of helping the enemy, even if there was no evidence of intent in the article, they had a right to presume the intent.

The Court: I do not accept that as a correct quotation of my charge, but I will give you an exception to what I said in that respect.

(Exception noted for the defendants as indicated, individually and jointly, by direction of the court.)

Mr. Gray: I ask for an exception to that portion of your Honor's charge in which you said to the jury that on passing upon the question of falsity they could use their own general knowledge. Your Honor put three classes in. Falsity, war and intent. Then you withdrew intent. The matter of the war I raise no question about, but the instruction that they could use their general knowl-
760 edge upon passing upon the question of falsity I ask for an exception to.

(Exception noted for the defendants as requested, individually and jointly, by direction of the court.)

The Court: I will allow the exception, and to make that perfectly clear to you, gentlemen, I will illustrate what I mean. If a statement were made, for illustration, (and understand, you may consider this purely as a supposititious case, using it wholly for the purpose of illustration)—if an article should be published to the effect that the majority of the people of the United States were out of sympathy with their Government in the prosecution of the war, I say to you that you may call upon your general knowledge to guide you to a conclusion as to whether or not that statement is false, and then you may go to the question as to whether it was wilful, whether the false statement was wilfully and knowingly made, and whether it was made further with the intent to promote the success of the enemies of the United States. That is why I withdrew the use of the word "intent." That is why I withdrew that from my charge.

Mr. Gray: Will your Honor give me an exception to the instructions you just gave the jury?

(Exception noted for the defendants as requested, individually and jointly, by direction of the court.)

Mr. Gray: Will your Honor give me an exception to
761 that portion of your charge with reference to the instructions on reasonable doubt? That will cover the proposition.

(Exception noted for the defendants, individually and jointly, as requested, by direction of the court.)

Mr. Gray: I ask for an exception to your instruction on the matter of character. The particular part of which I complain about is your statement to the jury that you instructed them as to character evidence because it was one of the matters which the law required you to instruct them upon, and that it was not offered as an answer to the charge, and your illustration of the importance of character testimony when a man is charged with a certain kind of an offense.

(Exception noted for the defendants, individually and jointly, as requested, by direction of the court.)

The Court: The exception is allowed.

Gentlemen of the jury, I do not want you to understand from the expression that I used that I was charging you as to the presumption of innocence, reasonable doubt and the good character features of the case merely because it was the duty of the trial judge, and to imply by that that I did not think that those things were of importance in the case. Understand, of course, I had no such thought as that in mind. What I meant was that it was unnecessary for me to call your attention to those features which enter into the consideration of a criminal case because as intelligent men I am
762 sure you already knew that and would have taken them into consideration, whether I had discussed them or not. Do not get the thought in your mind that I meant to minimize their importance. There is no kind of evidence in the world, for instance, that is of greater importance than evidence of good reputation, and I think I can say, without boastfulness, that there is no one who has been connected with the trial of cases who appreciate- its value more highly than the individual who charged you upon that point. I want you to regard it as the most important kind of evidence and as important in this case, but I want you also to consider it intelligently, and to give it its due and proper weight.

Mr. Gray: Of course, I have to call your Honor's attention to these matters, because the rules of court require that this is the only way I can do it.

The Court: I appreciate that. I think you are entitled to have the jury know that the rules of court require counsel to thus call the attention of the judge to the charge at its conclusion and in the presence of the jury. So that I am sure none of you will consider this as an interruption of your work.

You may take the case and dispose of it.

At 1.24 P. M. the jury retired.

A recess was taken until 2.30 P. M.

763 At 4.45 P. M. the Jury returned to the Court Room.

Present: Parties as before noted.

The Clerk: Gentlemen of the Jury, have you agreed upon your verdict?

The Foreman: We have.

The Clerk: How say you? Do you find the defendants guilty or not guilty?

The Foreman: Here is a paper. Do you want me to read it?

The Clerk: If you will.

The Foreman: We find Peter Schaefer not guilty, Counts 1 to 8 inclusive. Guilty, Count 9.

Paul Vogel, Not Guilty, Counts 1 to 8 inclusive. Guilty Count 9.

Louis Werner, Guilty, Counts 1 and 2.

Not Guilty, Count 3. Guilty, Count 4. Not Guilty, Counts 5, 6, 7 and 8. Guilty, Count 9.

Martin Darkow, Guilty, Count 1. Not Guilty, Count 2. Guilty, Count 3. Not Guilty, Count 4. Guilty, Counts 5 and 6. Not Guilty, Counts 7 and 8. Guilty, Count 9.

Herman Lemke, Not Guilty, Counts 1 to 8 inclusive. Guilty, Count 9.

The Clerk: And so say you all.

764 Mr. Gray: If your Honor pleases, I would ask that the jury be polled in reference to their verdict.

The Court: Is there any objection?

Mr. Roberts: I think not, sir.

The Court: Let the jury be polled.

The Clerk: Juror No. 1, how say you? Is this your finding?

Mr. Gray: I am sorry to put the Clerk, or anybody else, to the difficulty of——

The Clerk: Juror No. 1, how say you as to Peter Schaefer? You have here, "Not Guilty, Counts 1 to 8 inclusive, and Guilty, Count 9."

Mr. Gray: No. I want to be sure it is the individual verdict of each juror.

Mr. Roberts: If your Honor pleases, if these gentlemen have made a joint memorandum, certainly no juror could recollect the verdict on a number of counts without the memorandum before him. I think the least that could be done would be to allow them to make it individually, and state whether that is each one's verdict, if the verdict of the jury is to be polled, unless your Honor wants to send them back, and let each man make his memorandum, each man for himself.

The Court: Is it satisfactory to the District Attorney for each juror to be polled as to the verdict announced?

Mr. Roberts: That is entirely satisfactory to me, as to the verdict as Mr. Thomas, the Foreman, has announced it.

765 The Court: Whether each juror, as to the verdict as announced by the Foreman of the Jury, does so find or not.

Mr. Gray: As I understand it, if your Honor pleases, the polling of the jury means that each individual juror shall be asked as to his verdict, and he shall render the verdict as he recollects it. Of course, your Honor understands that it is not with an idle purpose, but because of the fact that there have been occasions in which verdicts have been rendered——

The Court: I appreciate that part of it, Mr. Gray.

Mr. Gray: I, therefore, ask that the jury be polled in the regular way.

The Court: The difficulty about that is this: You would have to ask each individual juror to remember as to each numbered count.

Mr. Gray: Yes, sir.

The Court: So that you would be testing rather his recollection than really his verdict, and if the form that I have suggested is satisfactory to the District Attorney, I will permit the polling to proceed in that way. Each juror may be asked whether he heard the announcement of the verdict as made, and whether or not he concurs in that verdict.

Mr. Roberts: Whether or not that is his verdict.

The Court: Whether or not that is his verdict.

Mr. Gray: Your Honor will grant me an exception?

The Court: Yes.

766 (Exception noted for the defendants, individually and jointly, by direction of the court.)

Mr. Gray: In order to put it in another way, I would ask your Honor, so that my request for the polling may be clear, that each of the jurors in the making of the poll or in the taking of the poll shall be asked as to what his individual verdict is with respect to the charges contained in the indictment, and that his answer thereto be taken upon the record. In other words, as I understand a poll, it is to ask each individual juror as to what his verdict is, and let him state what his verdict is. I may be in error, but I do not believe I am as to what a poll is.

The Court: The notes may show what transpires, and the suggestion is that each juror be called in the order of his number, and be asked the question whether he has heard the verdict as announced in open court as the verdict of the jury, and be asked the question as to his verdict.

Mr. Gray: Your Honor has already and will grant me an exception to the refusal to permit the jurors to be polled as I have indicated, which I believe is in accordance with the legal practice.

The Court: Certainly. That exception is allowed.

(Exception noted for the defendants, individually and jointly, as requested, by direction of the court.)

The Clerk: Juror No. 1: You have heard the verdict of the jury as rendered in open court. Is that your verdict?

767 Juror No. 1: It is.

The Clerk: Juror No. 2: You have heard the verdict of the jury as rendered in open court. Is that your verdict?

Juror No. 2: Yes.

The Clerk: Juror No. 3: You have heard the verdict of the jury as rendered in open court. Is that your verdict?

Juror No. 3: It is.

The Clerk: Juror No. 4: You have heard the verdict of the jury as rendered in open court. Is that your verdict?

Juror No. 4: It is.

The Clerk: Juror No. 5: You have heard the verdict of the jury as rendered in open court. Is that your verdict?

Juror No. 5: It is.

The Clerk: Juror No. 6: You have heard the verdict of the jury as rendered in open court. Is that your verdict?

Juror No. 6: It is.

The Clerk: Juror No. 7: You have heard the verdict of the jury as rendered in open court. Is that your verdict?

Juror No. 7: It is.

The Clerk: Juror No. 8: You have heard the verdict of the jury as rendered in open court. Is that your verdict?

Juror No. 8: It is.

The Clerk: Juror No. 9: You have heard the verdict of the jury as rendered in open court. Is that your verdict?

Juror No. 9: It is.

768 The Clerk: Juror No. 10: You have heard the verdict of the jury as rendered in open court. Is that your verdict?

Juror No. 10: It is.

The Clerk: Juror No. 11: You have heard the verdict of the jury as rendered in open court. Is that your verdict?

Juror No. 11: It is.

The Clerk: Juror No. 12: You have heard the verdict of the jury as rendered in open court. Is that your verdict?

Juror No. 12: It is.

The Clerk: And so say you all.

Mr. Gray: If your Honor pleases, I ask leave to either myself ask the members of the jury as to their verdict upon the various counts in this Bill of Indictment, or to ask your Honor to instruct the clerk to inquire of them?

The Court: I do not catch the import of your question, Mr. Gray.

Mr. Gray: The import of my question is similar to the other requests that I have made. In other words, I do not believe that there should be any verdict recorded, unless these jurors, each of them, are asked individually what their verdict is with respect to the indictment and the various counts therein.

The Court: I will inquire as to whether or not the District Attorney joins in any such request.

Mr. Roberts: I do not join in the request, no, sir.

The Court: Let the verdict be recorded, then, as rendered.

769 Mr. Gray: Will your Honor pass on my motion?

The Court: It is denied.

Mr. Gray: Will your Honor grant me an exception?

The Court: Yes.

(Exception noted for the defendants, individually and jointly, by direction of the court.)

Mr. Gray: If your Honor pleases, I object to the verdict being recorded at this present time.

Mr. Roberts: I move, on behalf of the Government, that the verdict as rendered be recorded.

The Court: I have so ruled, and an exception is allowed to the defendants.

(Exception noted for the defendants, individually and jointly, by direction of the court.)

Mr. Gray: If your Honor pleases, I now move your Honor for a new trial for each of the defendants upon each of the counts of the Bill of Indictment wherein verdicts of Guilty have been rendered in reference to that particular defendant.

I also move the Court for an arrest of judgment upon the verdict that has been rendered of "Guilty" as to certain of the defendants upon certain counts.

In making these motions I ask your Honor for as much time as the Court feels that the Court may grant for the filing of
770 my reasons in support thereof.

I would then ask your Honor to make an order permitting the defendants to be discharged upon bail, and fixing the amount of bail, pending the determination of the motion for a new trial and the motion in arrest of judgment.

The Court: The motion for a new trial and arrest of judgment may be considered as made in open court.

Counsel for the defendant is granted four days in which to file reasons in support of his motion for a new trial and arrest of judgment, with the privilege of submitting before argument of the motion additional reasons, the date for argument to be fixed by the Clerk of the Court, after conferring with the counsel for the United States and for the defendants.

771 And thereupon, upon the 27th day of September, 1918, the jury rendered a verdict against the defendant Louis Werner of guilty as to counts one, two, four and nine and not guilty as to counts three, five, six, seven and eight; against the defendant Martin Darkow guilty as to counts one, three, five, six and nine and not guilty as to counts two, four, seven and eight; against the defendant Peter Schaefer guilty as to count nine and not guilty as to counts one to eight, inclusive; against the defendant Herman Lemke, not guilty as to counts one to eight, inclusive and guilty as to count nine; against the defendant Paul Vogel, not guilty as to counts one to eight, inclusive, guilty as to count nine; and thereupon the said counsel for the defendant did except to the aforesaid rulings, charge, answers to points submitted for charge, and, inasmuch as the said rulings, charge and answers to points submitted for charge so excepted to did not appear upon the record, the said counsel for the said defendants did then and there tender this bill of exceptions to the rulings, charge and points submitted for charge and opinion of the said Court, and requested the seal of the Judge aforesaid should be put to the same, according to the form of the statute in such case made and provided; and thereupon the said Judge, at the request of the said counsel for the defendants, did put his seal to this bill of

exceptions pursuant to the aforesaid statute in such case made and provided, this 18th day of December, 1918.

O. B .DICKINSON,
U. S. Dist. Judge, E. D. of Pa.

Approved.
OWEN J. ROBERTS,
Special Asst. Dist. Atty.

Filed Dec. 18, 1918.
GEORGE BRODBECK, *Clerk,*
By J., *Deputy Clerk.*

772 In the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

THE UNITED STATES OF AMERICA

v.

PETER SCHAFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW and HERMAN LEMKE.

Indictment.

Opinion Sur Motions in Arrest of Judgment and for a New Trial

(Filed Dec. 9, 1918.)

DICKINSON, *J.:*

The reasons for a new trial in this case number forty-nine in all. Some of them are necessarily what may be characterized as formal. Many of the others indicate in their statement whether they are well or ill taken, and call for no discussion. This leaves for discussion three questions, two of which bear upon the course of the trial as affecting all of the defendants, and one as affecting two or possibly three of them.

One of the questions presented may be thus stated. It goes to the proposition of charging a defendant with one offence and convicting him of a different offence, and one with which he has not been charged in accordance with legal form. As a basis for the reason for a new trial advanced, the assertion is made with respect to certain counts in the indictment (those which may be called "falsenews" counts) that the theory upon which the indictment was framed is that a news dispatch emanated from a certain source and place, as, for illustration, an associated press dispatch from
773 Berne or Amsterdam, and that the defendants altered this dispatch so as to change its meaning. The falsity is thus charged to have consisted in this alteration.

Another basis for the reasons for a new trial advanced is the further assertion that there was no proof of either the sending, receipt or alteration of any such dispatches, and the inference is drawn that there could be no lawful conviction of guilt of that charge in the absence of evidence to support it.

With respect to the evidence which was introduced, the further assertion is made that it was confined to what might support a charge that the defendants had published a false report, but was wholly barren of anything which would support the charge as made.

The basis for these assertions is the fact that the newspaper office from which the publication issued received no dispatches of any kind. The paper frequently contained what purported to be dispatches from the different news centres of the world, and they were so published as to present the appearance of being news which had come to the office by cable or otherwise. Their real origin was this: Newspapers printed in English and other languages came to the office. Those who had to do with the publication of the newspaper of the defendants made free use of the contents of other papers. In newspaper parlance, they "lifted" the news from other papers.

The real gravamen of the offence of which they were guilty, in so far as they were guilty, without regard to any of its purely legal aspects, was that they changed the news which they had thus "lifted" so as to give it a tone which would afford comfort and encouragement to the enemies of the United States, or would be injurious to our cause. It will thus be seen that in no aspect did the act which was committed differ in substance from the act which was
774 charged. Whether it did so differ in the strict legal view depends wholly upon what the indictment means by the phrase "original dispatch."

The thought entertained by the learned counsel for the defendants and sought to be impressed upon the trial Judge, and now re-expressed, is that the indictment charged a specific offence and charged it in the narrow sense of being the act of falsifying a dispatch which had emanated from a news collecting agency, and that the dispatch so changed was one which in fact had been received by the defendants.

The logical outcome of this thought is that the only evidence which would support such a charge would be the testimony of some one connected with such a news agency that such a dispatch had been sent to the defendants, followed by evidence of its contents, and further evidence that the dispatch had been published in a falsified form.

The trial Judge refused to put this narrow construction upon the charge as laid in the indictment, but read it as expressive of a charge of the substantial offence of disseminating false statements which tended and were put out with intent to promote the success of the enemies of the United States.

The charge thus made would emphatically embrace the act of taking a news dispatch from another paper and so changing it as to make it serve a disloyal purpose. The dispatch so changed would be an "original dispatch" within the meaning of the indictment.

To give emphasis to the distinction sought to be expressed, we ar
of opinion, although there is nothing in this case to require us to g
so far, that the charge in substance would have been sup
775 ported by proof that the defendants had wholly faked a di
patch so that it had no other origin than an emanation fro
the brain of the person who faked it.

The question as now presented is wholly an appellate question, an
we take the view, as above expressed, because we deem it to be in lin
with the command of R. S. 1025. As we view it, the motive f
that command is a very practical one. A very short experience i
the trial of causes, criminal or civil, brings out with cameo lik
clearness two methods of trial. When one method is resorted t
procedure questions are given such prominence that the substanti
questions of fact or of substantive law are wholly or almost lost
view. When the other method is employed counsel and parties b
an agreement, tacit or expressed, join in presenting the substanti
issues which arise in the case, and as the phrase is, agree to try th
case on its merits without regard to form.

The injunction of R. S. 1025 was laid upon the Courts with th
contrast between these two systems of trial practice in the mind
Congress, and the command is that no indictment shall be held
be insufficient or effect be refused to a verdict if the indictment ar
trial be such as that a trial may be had and the trial is had in a
cordance with the second method described. This, as we understan
it, is what Congress means in saying that the test of every questi
of this character which is raised is whether or not there has cre
into the indictment or the trial anything which has worked to th
prejudice of the defendants. There is a class of distinctions wi
which highly trained and bright intellects love to deal which m
fitly be characterized as metaphysical. As an intellectual exerci
discussion of them is always pleasurable and may have
776 high didactic value, but the practical affairs of life cannot
made to await the end of the discussion.

We adhere to the view entertained by the Trial Judge that t
indictment charged and the evidence supports the offence defin
by the espionage law relating to the making of false reports &c.

The second of the points remaining for discussion in the cau
arises out of that part of the charge which dealt with the distincti
between treason and the acts condemned by the espionage law
criminal. As has often been observed, a charge to a jury shou
always be read in the atmosphere of the trial in which it was
livered. One of the functions of the charge is to enable a jury
comprehend the issues of a cause as presented to them by the e
dence and the arguments of counsel. The cause which they have
their minds as the one to be determined by them is the cause as th
presented, and it would only work confusion if the trial judge
not shape the charge accordingly. There was evidently, as t
charge itself indicates, some occurrence of the trial which prompt
the comment of which complaint is now made. A part of that co
plaint is that the comment was irrelevant and tended to prejud
the defendants.

There is nothing which we have been able to find in the record which either suggests or revives a recollection of what the happening was. In the absence of any such recollection, it must be left to surmise. As counsel for the defendants now read the charge and perhaps as they heard it they have received the impression that the charge magnified the crime laid in the indictment. Such was not its purpose, nor do we think its practical effect. The jury was made up
of high minded and intelligent men. This does not mean
777 that they would not be swayed by the emotions which we all
feel when what we call our love of country is hurt, but it does mean that they would distinguish between acts which have been made criminal and publications or speeches which affect us unpleasantly. Aside from the particular happening, whatever it was, which invoked this part of the charge, the comments complained of had evidently a double purpose. One was that it would not follow that because mere words might not be overt acts of treason, mere words could not constitute a crime. The other is that no matter how objectionable they might be to the hearer or the reader, because coming within the category of what was disloyal or what would be in the common acceptation treasonable, they would not be a crime in the legal sense of which any one could be convicted, unless the objectionable acts had been declared to be a crime by some act of Congress. This thought is, we think, clearly expressed in the main charge, and is certainly clearly presented in what was added to the main charge upon exception taken by defendants.

The point now made is properly enough vigorously pressed by counsel, and we have given it very careful consideration. The result is we are unable to see in this any reason for interference with the verdict.

The benefit of the third point is limited to the defendants Lemke, Schafer and Vogel. Its application to Lemke is not conceded. Some countenance is lent to it by the act of the District Attorney in not asking the jury for the conviction of Schaefer and Vogel, except upon the conspiracy count. The connection of these two men with the publication was such as, we assume, to admittedly affect the degree
of guilt, and because of this is a consideration in the imposi-
778 tion of sentence. What may in a sense be called their formal
responsibility for the publication furnishes in itself evidence to be submitted to a jury. Their real connection with it was at least this, that while their main motive in being parties to the publication of the newspaper was to promote the interests of the organization with which they were connected, there were justifying grounds for the finding that in order to promote this interest they were not only willing but deemed it helpful that the newspaper as the organ of their organization should assume an attitude which the jury has found to be a disloyal one. The truth may be that their motive was not a disloyal one in the sense that they wished to promote the success of the enemies of the United States, but the evidence again justified the finding that their intent was an unlawful one, because they could not cater to those whose support they sought unless they did have the newspaper do all which it could do toward promoting the

success of that government with the people of which we were at war. Indeed, in disclaiming disloyal motives, there was a plain, if not a frank, admission of this intent, and of the selfish reason behind it.

We do not find this reason for a new trial to be any ground for interference with the verdict.

Perhaps one other thing calls for some comment. There was an attempt made to express in the charge to the jury the thought that with respect to all matters which are matters of general information, the jury had the right to call upon this fund of general knowledge which was in their keeping. This must be so, because there is no practicable method of having such a state of facts enter into the make up of a judgment other than by drawing upon this fund. The kind of knowledge which is based upon what are classified
779 as historical facts supplies us with an illustration of the distinction intended. The quoted parts of the charge dealing with this thought were not very happily or, at least, very clearly expressed. What was in mind was that the jury would want to know how they were to deal with certain questions which were essentially questions of fact, and yet in respect to which there was, strictly speaking, no evidence. One of these was the question of the existence of a state of war. This was in no important sense a question, but with respect to how a state of war could be found to be a fact, the method employed afforded an illustration of how these other questions of fact with which the jury had to deal, which were matters of general knowledge, could be met. Many instances of so called propaganda in this and other countries may be used as illustrations. What is put out is known to be false because*d* so pronounced by the information which is common to all. The question, however, is what will justify a finding of falsity? Upon what can the finding be based? The answer is that if the statements made are of matters which are the subject of general information and are part of our common knowledge, their truth or falsity may be thus tested. The line between what may be thus tested and a specific fact, which must be proven, is a line which cannot otherwise be defined than by the statement that we may judge of anything which is within, and the subject of common knowledge, although we may have no other light leading us to a judgment than that afforded by such common knowledge as we have.

The complaint made is that the instruction given was so general as to be misleading and was fraught with danger (to use an extravagant illustration) that the jury might accept it as a warrant, in cases which had aroused a popular interest and in that sense were
780 matters of common knowledge, to convict defendants who were thus commonly thought to be guilty.

We have carefully re-read the charge with the thought thus indicated in mind, and when read in the light of the events of the trial and of the arguments addressed to the jury, we cannot think the jury failed to grasp the distinction made between those things of which judicial notice could be taken, and facts which must be affirmative and even formally established by evidence.

The motions in arrest of judgment and for a new trial are discharged.

781 In the District Court of the United States for the Eastern District of Pennsylvania, Sept. Sess., 1917.

No. 89.

UNITED STATES OF AMERICA

vs.

PETER SCHAEFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

Judgment.

Before Dickinson, J.

And now, to wit: this 18th day of December, 1918, all and singular the premises being seen and by the Court here fully understood, it is considered and adjudged that the defendant Peter Schaefer be imprisoned and confined in the Mercer County Jail at Trenton, N. J., for the term of one year from this 18th day of December, 1918, and stand committed until judgment be fully complied with.

By the Court:
Attest: GEORGE BRODBECK, *Clerk.*

782 In the District Court of the United States for the Eastern District of Pennsylvania, Sept. Sess., 1917.

No. 89.

UNITED STATES OF AMERICA

vs.

PETER SCHAEFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

Judgment.

Before Dickinson, J.

And now, to wit: this 18th day of December, 1918, all and singular the premises being seen and by the Court here fully understood, it is considered and adjudged that the defendant Paul Vogel be imprisoned and confined in the Mercer County Jail at Trenton, N. J., for the term of one year from this 18th day of December, 1918, and stand committed until judgment be fully complied with.

By the Court:
Attest: GEORGE BRODBECK, *Clerk.*

783 In the District Court of the United States for the Eastern District of Pennsylvania, Sept. Sess., 1918.

No. 89.

UNITED STATES OF AMERICA

vs.

PETER SCHAEFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

Judgment.

Before Dickinson, J.

And now, to wit: this 18th day of December, 1918, all and singular the premises being seen and by the Court here fully understood, it is considered and adjudged that the defendant Louis Werner be imprisoned and confined in the United States Penitentiary at Atlanta, Georgia, for the term of five years from this 18th day of December, 1918, and stand committed until judgment be fully complied with.

By the Court:

Attest:

GEORGE BRODBECK, *Clerk.*

784 In the District Court of the United States for the Eastern District of Pennsylvania, Sept. Sess., 1917.

No. 89.

UNITED STATES OF AMERICA

vs.

PETER SCHAEFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

Judgment.

Before Dickinson, J.

And now, to wit: this 18th day of December, 1918, all and singular the premises being seen and by the Court here fully understood, it is considered and adjudged that the defendant Martin Darkow be imprisoned and confined in the United States Penitentiary at Atlanta, Georgia, for the term of five years from this 18th day of December, 1918, and stand committed until judgment be fully complied with.

By the Court:

Attest:

GEORGE BRODBECK, *Clerk.*

85 In the District Court of the United States for the Eastern District of Pennsylvania, Sept. Sess., 1918.

No. 89.

UNITED STATES OF AMERICA

vs.

PETER SCHAEFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

Judgment.

Before Dickinson, J.

And now, to wit: this 18th day of December, 1918, all and singular the premises being seen and by the Court here fully understood, it is considered and adjudged that the defendant Herman Lemke be imprisoned and confined in the United States Penitentiary at Atlanta, Georgia, for the term of two years from this 18th day of December, 1918, and stand committed until judgment be fully complied with.

By the Court:

Attest:

GEORGE BRODBECK, *Clerk.*

786 In the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

THE UNITED STATES

vs.

LOUIS WERNER, MARTIN DARKOW, PETER SCHAEFFER, PAUL VOGEL, and HERMAN LEMKE.

Petition of Peter Schaefer for Writ of Error.

(Filed Dec. 18, 1918.)

To the Honorable the Judges of the United States District Court for the Eastern District of Pennsylvania:

The Petition- Peter Schaefer respectfully represents:

1. That he, together with the other above named defendants, was indicted in the District Court of the United States for the Eastern District of Pennsylvania upon a bill of indictment, as of September Sessions, 1917, No. 89, charging making and conveying false reports to promote the success of the enemies of the United States,

wilfully obstructing recruiting and enlistment service, and c
spiracy to make false reports, etc.

2. At the December Sessions, 1917, to wit, on the seventeenth d
of December, 1917, and before pleading or taking other steps in t
case, your petitioner, by his counsel, filed a demurrer to the bill
indictment in said case, which said demurrer was, on the twen
third day of January, 1918, overruled, to which ruling and decis
of the Court in overruling the demurrer your petitioner, by his co
sel, then and there excepted.

3. That at September Sessions, 1918, your petitioner, having b
duly arraigned upon said indictment, pleaded not guilty thereto, a
a jury was called and empanelled and your petitioner tried bef
said jury, and on September 27, 1918, the said jury rende
787 a verdict of guilty as to count nine and not guilty as
counts one to eight inclusive.

4. That exceptions were taken to the rulings of said Court on
admission of evidence against your petitioner, on the rejection
evidence in favor of your petitioner, to the charges and decisions
the learned Judge upon the law and as to his refusal to instruct
Jury as requested in points for charge and a bill of exceptions
been presented and signed and sealed by the learned Judge and fi
of record in said Court.

5. That a motion for a new trial on behalf of your petitioner w
made, assigning as reasons the errors on the part of the learned tr
Judge in the admission of evidence against your petitioners, in
rejection of evidence in favor of your petitioners, the decisions of
said Judge upon the law in his charge to the jury and in his refu
to instruct the jury as requested in points for charge, which moti
for a new trial as aforesaid has been argued and refused.

6. That on the eighteenth day of December, 1918, your petitio
was sentenced by the Court, the sentence being for the term
one year from this date, in the Mercer County Jail at Trenton, N.

7. The assignments of error have been filed with the Clerk of t
District Court for the Eastern District of Pennsylvania, in accordan
with the Rules of Court.

8. Therefore your petitioner prays that a writ of error from t
District Court of the United States for the Eastern District of Pen
sylvania to the Supreme Court of the United States be allow
788 in the premises directed to the Clerk of the District Court
the United States for the Eastern District of Pennsylvani
that a citation be issued returnable in thirty days upon the entry
such security as may be directed by the Court, and that a supersede
and a stay of execution and proceedings in the said District Co
may be granted, pending such writ of error and appeal, and th
your petitioner be admitted to bail upon giving bond in such sum
the Court may direct.

And your petitioner will ever pray, etc.

PETER SCHAEFER.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

The above named Peter Schaefer, being duly sworn according to law, on his oath, deposes and says that the facts set forth in the foregoing petition by him subscribed, are true as therein stated.

PETER SCHAEFER.

Sworn to and subscribed before me this 18th day of December, A. D. 1918.

LEO A. LILLY,
Deputy Clerk U. S. District Court,
Eastern District of Penna.

Before Dickinson, J.

Prayer of Petition granted.
By the Court:
Attest:

E. G. JOHNSON,
Deputy Clerk.

789 In the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

THE UNITED STATES

vs.

LOUIS WERNER, MARTIN DARKOW, PETER SCHAEFFER, PAUL VOGEL, and HERMAN LEMKE.

Assignments of Error of Peter Schaeffer.

(Filed Dec. 18, 1918.)

1. Sections 3 and 4, of Title 1, of the Act of June 15, 1917, under which the indictment in the above case was found, are unconstitutional and void.

2. The learned Court erred in overruling the demurrer filed by the defendant to the bill of indictment in the above case.

3. The learned trial Judge erred in refusing to permit a challenge to be exercised on behalf of the defendants with reference to the juror George Kimball (Testimony pp. 74 & 75), as follows:

"Mr. Gray: I challenge on behalf of all of the defendants.

Mr. Roberts: I ask that the challenge be not sustained, as the defendants have now exercised ten peremptory challenges, and have exhausted their rights in that behalf.

Mr. Gray: Your Honor understands that it is because of the feeli
that I have, that that act trespasses upon the constitutional rig
of the defendants, that I am exercising this right of challenge n
or claiming the right to challenge.

The Court: I understand, Mr. Gray, considering all the defe
ants as a single party, to quote the phraseology of the
790 there have been ten peremptory challenges exercised.

Mr. Gray: I do not know just what view your Honor ta
of it, but——

The Court: I mean there is no question as to the number.

Mr. Gray: There is no question, if your Honor will let me pu
in my way, that the aggregate of the challenges exercised by the in
vidual defendants is now ten, but not all of the defendants at
bar of this court have expressed their wish to challenge anywhe
near that number, and, therefore, I suggest to your Honor that,
having expressed their desire to challenge anywheres near that nu
ber, they are not bound by what their co-defendants may have d
with respect to any particular juror, and that, therefore, they
still within their rights.

The Court: I rule that under the provisions of this Act of C
gress all the defendants will be deemed a single party, and
challenges having been exercised in the aggregate, the right
challenge is exhausted. I will give each of the defendants indiv
ually and jointly an exception.

Mr. Gray: I ask for an exception to your Honor's ruling, and
that I may have it stated in another way, I ask for an exception
the refusal of your Honor to permit this challenge to be made.

(Exception noted for the defendant-, individually and jointly,
requested, by direction of the Court.)"

4. The learned Trial Judge erred in refusing to instruct the ju
to render a verdict of not guilty as to all of the defendants up
all of the counts of the bill of indictment (Testimony
791 577), as follows:

"I, therefore ask your Honor to instruct the jury to ren
a verdict of "Not Guilty" as to all of the defendants upon all
counts.

(Motion overruled.)

(Exception noted for the defendants, individually and jointly,
direction of the court.)"

5. The learned Trial Judge erred in refusing to instruct the ju
separately to render a verdict of not guilty upon each of the seve
counts from 2 to 9, inclusive (Testimony p. 578), as follows:

"Mr. Gray: I make the same motion separately as to each of t
remaining counts, which are 2 to 9 inclusive as to all of the
fendants.

(Motion overruled.)

(Exception noted for the defendants, individually and jointly,
direction of the Court.)"

6. The learned Trial Judge erred in instructing the jury as follows (Testimony p. 586):

"You will observe that the law applies only when we are in a state of war, in times of war, and that its general purpose
792 is to protect, to preserve, rather, our military strength and efficiency, to protect ourselves against anything which would promote the success of our enemies by undermining our morale, lessening our will to win, or, as it is commonly expressed, our will to conquer, interfering with our military strength, by creating divisions among our people, hampering our military organization by promoting insubordination among our troops, or obstructing enlistments or enrollments. Bear in mind, the idea is to prohibit these things against even the possibility of the dangerous consequences which may follow." (Exception allowed.)

8. The learned Trial Judge erred in instructing the jury (Testimony pp. 588-9), as follows:

"These acts which are prohibited are treasonable in the sense in which that word is used, in the common speech of the people. Indeed, they may constitute legal treason as defined in some jurisdictions, but they are not treason against the United States, for the simple reason that there is a provision in our constitution, (which, of course, the Acts of Congress follow), that treason against the United States,—you will observe it does not say "treason generally," but treason against the United States shall consist only in making war upon them, or in adhering to their enemies, giving them aid and comfort, and there is another provision to the effect that no person can be convicted of the crime of treason unless there are two witnesses to the same overt act, making, as you will see, it perfectly clear that mere words, whether published or not, as long as they are mere words, do not constitute the crime of treason, but they must be words uttered and published under such circumstances
793 as to become deeds or acts in themselves, as "words" may be. So that words, unless there is something to which they may attach and unless the direct, natural, and reasonably to be expected consequences of them would be to give aid and comfort to the enemy, do not constitute the crime of treason. Every man will observe, however, that even mere words may be fraught with consequences which, although too remote to constitute the crime of treason, may nevertheless be words which are fraught with most awful consequences and possibilities of evil, and, therefore, it is properly within the province of the law to prohibit, under circumstances which the law may define, and make it a crime even to utter them. In substance, that is what this law does. Congress could not call some mere words treason, because the Constitution prohibits it, but there is no constitutional limitation of the power of Congress to declare those things a crime against the law which Congress has done in this act to which I have adverted." (Exception allowed.)

9. The learned Trial Judge erred in instructing the jury (Testimony pp. 592-3), as follows:

"With respect to intent, to promote the success of our enemies.

Let me distinguish here between "intent" and "Motive" in the sense of something which moves a person to do an act. It is conceivable—indeed there has been some evidence of that actual condition here—that a person without any attitude of mind of friendliness to the enemy or of enmity to us might do something with the purpose and intent to promote the success of the enemy, and his motive for doing it might be, for illustration, a mercenary motive. He might not do it actuated by the motive that he wished to promote the success of the enemy. His real motive might be what I
794 have characterized as a mercenary one, the desire to make some money out of the act, but if his intent was to promote the success of the enemy, the motive would not excuse him, and indeed, such a motive as I have instanced would be regarded by most men ethically, at least, as an aggravation of the offense. And so with respect to any other motive which might actuate a man. It is imaginable, although it is difficult to conceive that a man would be in such a state of mind, but, nevertheless, it is imaginable that a man might be so devoted, for illustration, to the doctrine of non-resistance as that he might believe that it was his duty, and the duty of the Nation to which he belonged, to offer no resistance to any injury or any indignity however great which might be imposed upon him, and influenced by a motive of that kind, he might do an act, intending to promote the success of the enemy, by bringing about a lack of preparation on the part of ourselves.

What we are concerned with is that intent, and not the motive which sets the act in motion as distinguished from the intent." (Exception allowed.)

10. The learned Trial Judge erred in instructing the jury (Testimony, pp. 595-6), as follows:

"In determining this question, (and I say again that I have not attempted to give you a technically accurate enumeration of everything which is in this act, I refer you again to the language of the act to make it complete, if I have omitted anything), but in passing upon this question of falsity and in passing upon this question of intent and in passing upon, of course, the question of whether or not we are at war, you are permitted to use your general knowledge. I will withdraw the reference to "intent," but in
795 passing upon the question of whether we are at war, and in passing upon any other questions which are in like manner a matter of public knowledge and general information, you have the right to call upon the fund of general information which is in your keeping." (Exception allowed.)

11. The learned Trial Judge erred in instructing the jury as follows (Testimony p. 597):

"Upon the question of publication. You have the right to take that up in any order which seems proper to your mind. There was a publication. It necessarily follows that someone was concerned in that publication and the actors in it. You have been given evidence here as to the official relations of the defendants to this publication, what their duties were, what those duties involved. You know that

this publication issued from a certain place and from a certain office, and by the process of elimination you have been given aid in drawing an inference as to the part of each in the publication, and in addition to that you have now in the case the admissions made by the several defendants themselves in their testimony." (Exception allowed.)

12. The learned Trial Judge erred in instructing the jury (Testimony pp. 604-5-6), as follows:

"Mr. Gray: If your Honor pleases, I ask your Honor to instruct the jury with respect to the first count in the Bill of Indictment, that before they can convict any of the defendants they must find not only what you have instructed them with reference to that defendant, but that the article alleged to have been published was false as charged in the indictment, in that it differed from the original report as set forth in the indictment. In other words, that they cannot convict them unless they find the charge as laid in the indictment to be so.

The Court: Gentlemen of the jury, perhaps it might be
796 well for me to detain you just a moment upon a discussion of that thought.

Of course, it is true that in the trial of any case a man cannot be convicted of any other offense than the offense with which he is then charged, and, of course, your verdict means that he is guilty of the offense charged. That is perfectly clear. But in considering this charge I instruct you that you are permitted to go to its real meaning, its real substance and real effect. That is, that these publications were false, that they were false in the respects which have been outlined to you by counsel. "Falsity" implies the thought which I expressed to you in my general charge. It really expresses more than that, because "Falsity" may exist in telling the truth *of* the party who makes the true statement tells only half the truth. There is a great deal in the old adage that the most dangerous kind of a lie is half of the truth, or the truth half told, or a statement which is part truth and part lie. It is the substantial thing which you are to consider.

The real offense with which these defendants are charged is in putting out these false statements. They received them from a source. That source purported to be the report of a despatch, and the evidence in this case would seem to direct your minds in at least some of these instances, perhaps in many of them, to just where the report of the despatch appeared. They took that report as it came to them, and the charge is, in plain words, that they garbled it, sometimes by adding something to it and sometimes by leaving things out and sometimes by a change of the words. But the substantial thing which you are to pass upon is, was the report or statement that they put out false? Was it wilfully and knowing- false? Was it put out thus falsified with the intent to promote the success
797 of the enemies of the United States?

Mr. Gray: But, if your Honor pleases, the thought that I meant to convey I do not think your Honor has touched upon, and

that is that each sub-head of the first count, and the first count in itself charges the falsity to be in the doing of a particular thing, whether that thing was an omission or a change or an addition, and what I ask you to say to the jury is——

The Court: I think I catch your point. I do not care to discuss it, but if you have no objection to my stating your point in my own way, I will. I understand that you are raising the point that here are certain despatches, original despatches, which emanated from certain authorized sources, and that this indictment charges these defendants with a falsification of those despatches, and that that is the thing this jury must find.

Mr. Gray: That is correct, sir. That is part of it.

The Court: I decline to so charge the jury.

Mr. Gray: Will your Honor grant me an exception?

The Court: I will allow an exception to the defendants.

(Exception noted for the defendants, individually and jointly, by direction of the court.)"

13. The learned Trial Judge erred in instructing the jury (Testimony pp. 606-7), as follows:

"Mr. Gray: My point went a little farther than that. That is, that they must find falsification, if it was falsification, in the manner alleged in the indictment. In other words, that is the falsification that they are to determine, and I intended to follow that up, and I will join it here, in asking your Honor to say to the jury that in cases in which the indictment charges the omission of anything,
798 and no proof has been offered to show any omission, they have no right to consider the allegation in the indictment, which, of course, follows, ipso facto as proof of the charges themselves. I mean to say that in one or two of those newspaper articles they charge omission of things, and the indictment sets forth the things that are supposed to be omitted in the indictment, but there is no evidence of the correctness of them.

The Court: Of course, gentlemen of the jury, you are not considering the charge as proof. A charge proves nothing except the fact that a man is charged with crime, and it means nothing except that the official bodies connected with the administration of justice deemed the case to be one to be submitted to you as a petit jury, to determine the truth or falsity of the charges, and you are to do that, of course, by looking to the proofs, and as I have already said to you, and as your own common sense and sense of justice would indicate to you, I am sure, you must find those proofs in the evidence. The United States must bring home the proof of the charges as made, and they must bring it home by submitting to you evidence which carries to your minds a conviction of the truth of the charge, and carries it with the degree of certainty which is characterized by the expression "beyond a reasonable doubt."

14. The learned Trial Judge erred in instructing the jury (Testimony p. 612), as follows:

"The Court: I will allow the exception, and to make that perfectly clear to you, gentlemen, I will illustrate what I mean. If a state-

ment were made, for illustration, (and understand, you may consider this purely as a suppos-titious case, using it wholly for the purpose of illustration),—if an article should be published
799 to the effect that the majority of the people of the United States were out of sympathy with their Government in the prosecution of the war, I say to you that you may call upon your general knowledge to guide you to a conclusion as to whether or not that statement is false, and then you may go to the question as to whether it was wilfull, whether the false statement was wilfully and knowingly made, and whether it was made further with the intent to promote the success of the enemies of the United States. That is why I withdrew the use of the word "intent." That is why I withdraw that from my charge.

Mr. Gray: Will Your Honor give me an exception to the instructions you just gave the jury?

(Exception noted for the defendants as requested, individually and jointly, by direction of the court.)"

(Sgd.) WM. A. GRAY,
Attorney for Defendant.
HENRY JOHN NELSON,
Attorney for Defendant.

800 In the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

THE UNITED STATES

vs.

LOUIS WERNER, MARTIN DARKOW, PETER SCHAEFFER, PAUL VOGEL, and HERMAN LEMKE.

Petition of Paul Vogel for Writ of Error.

(Filed Dec. 18, 1918.)

To the Honorable the Judges of the United States District Court for the Eastern District of Pennsylvania:

The Petition- Paul Vogel respectfully represents:

1. That he, together with the other above named defendants, was indicted in the District Court of the United States for the Eastern District of Pennsylvania upon a bill of indictment, as of September Sessions, 1917, No. 89, charging making and conveying false reports to promote the success of the enemies of the United States, wilfully obstructing recruiting and enlistment service, and conspiracy to make false reports, etc.

2. At the December Sessions, 1917, to wit, on the seventeenth day of December, 1917, and before pleading or taking other steps in this

case, your petitioner, by his counsel, filed a demurrer to the bill
indictment in said case, which said demurrer was, on the twen
third day of January, 1918, overruled, to which ruling and decisi
of the Court in overruling the demurrer your petitioner, by his cou
sel, then and there excepted.

3. That at September Sessions, 1918, your petitioner, having be
duly arraigned upon said indictment, pleaded not guilty thereto, a
a jury was called and empanelled and your petitioner tried bef
said jury, and on September 27, 1918, the said jury render
801 a verdict of guilty as to count nine and not guilty as
counts one to eight inclusive.

4. That exceptions were taken to the rulings of said Court on t
admission of evidence against your petitioner, on the rejection
evidence in favor of your petitioner, to the charges and decisions
the learned Judge upon the law and as to his refusal to instruct t
Jury as requested in points for charge and a bill of exceptions h
been presented and signed and sealed by the learned Judge and fil
of record in said Court.

5. That a motion for a new trial on behalf of your petitioner w
made, assigning as reasons the errors on the part of the learned tri
Judge in the admission of evidence against your petitioners, in t
rejection of evidence in favor of your petitioners, the decisions of t
said Judge upon the law in his charge to the jury and in his refus
to instruct the jury as requested in points for charge, which moti
for a new trial as aforesaid has been argued and refused.

6. That on the eighteenth day of December, 1918, your petition
was sentenced by the Court, the sentence being for the term
one year from this date, in the Mercer County Jail at Trenton, N.

7. The assignments of error have been filed with the Clerk of t
District Court for the Eastern District of Pennsylvania, in accordan
with the Rules of Court.

8. Therefore your petitioner prays that a writ of error from t
District Court of the United States for the Eastern District of Pen
sylvania to the Supreme Court of the United States be allow
802 in the premises directed to the Clerk of the District Court
the United States for the Eastern District of Pennsylvani
that a citation be issued returnable in thirty days upon the entry
such security as may be directed by the Court, and that a supersede
and a stay of execution and proceedings in the said District Cou
may be granted, pending such writ of error and appeal, and th
your petitioner be admitted to bail upon giving bond in such sum
the Court may direct.

And your petitioner will ever pray, etc.

PAUL VOGEL.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

The above named Paul Vogel, being duly sworn according t
law, on his oath, deposes and says that the facts set forth in the for
going petition by him subscribed, are true as therein stated.

PAUL VOGEL.

Sworn to and subscribed before me this 18th day of December, A. D. 1918.

LEO A. LILLY,
Deputy Clerk U. S. District Court,
Eastern District of Penna.

Before Dickinson, J.

Prayer of Petition granted.
By the Court:
Attest:

E. G. JOHNSON,
Deputy Clerk.

803 In the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

THE UNITED STATES

vs.

LOUIS WERNER, MARTIN DARKOW, PETER SCHAEFFER, PAUL VOGEL, and HERMAN LEMKE.

Assignments of Error of Paul Vogel.

(Filed Dec. 18, 1918.)

1. Sections 3 and 4, of Title 1, of the Act of June 15, 1917, under which the indictment in the above case was found, are unconstitutional and void.

2. The learned Court erred in overruling the demurrer filed by the defendant to the bill of indictment in the above case.

3. The learned trial Judge erred in refusing to permit a challenge to be exercised on behalf of the defendants with reference to the juror George Kimball (Testimony pp. 74 & 75), as follows:

"Mr. Gray: I challenge on behalf of all of the defendants.

Mr. Roberts: I ask that the challenge be not sustained, as the defendants have now exercised ten peremptory challenges, and have exhausted their rights in that behalf.

Mr. Gray: Your Honor understands that it is because of the feeling that I have, that that act trespasses upon the constitutional rights of the defendants, that I am exercising this right of challenge now, or claiming the right to challenge.

The Court: I understand, Mr. Gray, considering all the defendants as a single party, to quote the phraseology of the act,
804 there have been ten peremptory challenges exercised.

Mr. Gray: I do not know just what view your Honor takes of it, but——

The Court: I mean there is no question as to the number.

Mr. Gray: There is no question, if your Honor will let me put i in my way, that the aggregate of the challenges exercised by the indi vidual defendants is now ten, but not all of the defendants at th bar of this court have expressed their wish to challenge anywhere near that number, and, therefore, I suggest to your Honor that, no having expressed their desire to challenge anywheres near that num ber, they are not bound by what their co-defendants may have don with respect to any particular juror, and that, therefore, they ar still within their rights.

The Court: I rule that under the provisions of this Act of Con gress all the defendants will be deemed a single party, and ten challenges having been exercised in the aggregate, the right o challenge is exhausted. I will give each of the defendants individ ually and jointly an exception.

Mr. Gray: I ask for an exception to your Honor's ruling, and so that I may have it stated in another way, I ask for an exception to the refusal of your Honor to permit this challenge to be made.

(Exception noted for the defendant-, individually and jointly, as requested, by direction of the Court.)"

4. The learned Trial Judge erred in refusing to instruct the jury to render a verdict of not guilty as to all of the defendants upon all of the counts of the bill of indictment (Testimony p.
805 577), as follows:

"I, therefore ask your Honor to instruct the jury to render a verdict of "Not Guilty" as to all of the defendants upon all the counts.

(Motion overruled.)

(Exception noted for the defendants, individually and jointly, by direction of the court.)"

5. The learned Trial Judge erred in refusing to instruct the jury separately to render a verdict of not guilty upon each of the several counts from 2 to 9, inclusive (Testimony p. 578), as follows:

"Mr. Gray: I make the same motion separately as to each of the remaining counts, which are 2 to 9 inclusive as to all of the defendants.

(Motion overruled.)

(Exception noted for the defendants, individually and jointly, by direction of the Court.)"

6. The learned Trial Judge erred in instructing the jury as follows (Testimony p. 586):

"You will observe that the law applies only when we are in a state of war, in times of war, and that its general purpose
806 is to protect, to preserve, rather, our military strength and efficiency, to protect ourselves against anything which would promote the success of our enemies by undermining our morale, lessening our will to win, or, as it is commonly expressed, our will

to conquer, interfering with our military strength, by creating divisions among our people, hampering our military organization by promoting insubordination among our troops, or obstructing enlistments or enrollments. Bear in mind, the idea is to prohibit these things against even the possibility of the dangerous consequences which may follow." (Exception allowed.)

8. The learned Trial Judge erred in instructing the jury (Testimony pp. 588-9), as follows:

"These acts which are prohibited are treasonable in the sense in which that word is used, in the common speech of the people. Indeed, they may constitute legal treason as defined in some jurisdictions, but they are not treason against the United States, for the simple reason that there is a provision in our constitution, (which, of course, the Acts of Congress follow), that treason against the United States,—you will observe it does not say "treason generally," but treason against the United States shall consist only in making war upon them, or in adhering to their enemies, giving them aid and comfort, and there is another provision to the effect that no person can be convicted of the crime of treason unless there are two witnesses to the same overt act, making, as you will see, it perfectly clear that mere words, whether published or not, as long as they are mere words, do not constitute the crime of treason, but they must be words uttered and published under such circumstances
807 as to become deeds or acts in themselves, as "words" may be. So that words, unless there is something to which they may attach and unless the direct, natural, and reasonably to be expected consequences of them would be to give aid and comfort to the enemy, do not constitute the crime of treason. Every man will observe, however, that even mere words may be fraught with consequences which, although too remote to constitute the crime of treason, may nevertheless be words which are fraught with most awful consequences and possibilities of evil, and, therefore, it is properly within the province of the law to prohibit, under circumstances which the law may define, and make it a crime even to utter them. In substance, that is what this law does. Congress could not call some mere words treason, because the Constitution prohibits it, but there is no constitutional limitation of the power of Congress to declare those things a crime against the law which Congress has done in this act to which I have adverted." (Exception allowed.)

9. The learned Trial Judge erred in instructing the jury (Testimony pp. 592-3), as follows:

"With respect to intent, to promote the success of our enemies. Let me distinguish here between "intent" and "Motive" in the sense of something which moves a person to do an act. It is conceivable—indeed there has been some evidence of that actual condition here—that a person without any attitude of mind of friendliness to the enemy or of enmity to us might do something with the purpose and intent to promote the success of the enemy, and his motive for doing it might be, for illustration, a mercenary motive. He might not do it actuated by the motive that he wished to promote the

success of the enemy. His real motive might be what I
808 have characterized as a mercenary one, the desire to make some money out of the act, but if his intent was to promote the success of the enemy, the motive would not excuse him, and indeed, such a motive as I have instanced would be regarded by most men ethically, at least, as an aggravation of the offense. And so with respect to any other motive which might actuate a man. It is imaginable, although it is difficult to conceive that a man would be in such a state of mind, but, nevertheless, it is imaginable that a man might be so devoted, for illustration, to the doctrine of non-resistance as that he might believe that it was his duty, and the duty of the Nation to which he belonged, to offer no resistance to any injury or any indignity however great which might be imposed upon him, and influenced by a motive of that kind, he might do an act, intending to promote the success of the enemy, by bringing about a lack of preparation on the part of ourselves.

What we are concerned with is that intent, and not the motive which sets the act in motion as distinguished from the intent." (Exception allowed.)

10. The learned Trial Judge erred in instructing the jury (Testimony, pp. 595-6), as follows:

"In determining this question, (and I say again that I have not attempted to give you a technically accurate enumeration of everything which is in this act, I refer you again to the language of the act to make it complete, if I have omitted anything), but in passing upon this question of falsity and in passing upon this question of intent and in passing upon, of course, the question of whether or not we are at war, you are permitted to use your general knowledge. I will withdraw the reference to "intent," but in
809 passing upon the question of whether we are at war, and in passing upon any other questions which are in like manner a matter of public knowledge and general information, you have the right to call upon the fund of general information which is in your keeping." (Exception allowed.)

11. The learned Trial Judge erred in instructing the jury as follows (Testimony p. 597):

"Upon the question of publication. You have the right to take that up in any order which seems proper to your mind. There was a publication. It necessarily follows that someone was concerned in that publication and the actors in it. You have been given evidence here as to the official relations of the defendants to this publication, what their duties were, what those duties involved. You know that this publication issued from a certain place and from a certain office, and by the process of elimination you have been given aid in drawing an inference as to the part of each in the publication, and in addition to that you have now in the case the admissions made by the several defendants themselves in their testimony." (Exception allowed.)

12. The learned Trial Judge erred in instructing the jury (Testimony pp. 604-5-6), as follows:

"Mr. Gray: If your Honor pleases, I ask your Honor to instruct

the jury with respect to the first count in the Bill of Indictment, that before they can convict any of the defendants they must find not only what you have instructed them with reference to that defendant, but that the article alleged to have been published was false as charged in the indictment, in that it differed from the original report as set forth in the indictment. In other words, that they cannot convict them unless they find the charge as laid in the indictment to be so.

The Court: Gentlemen of the jury, perhaps it might be
810 well for me to detain you just a moment upon a discussion of that thought.

Of course, it is true that in the trial of any case a man cannot be convicted of any other offense than the offense with which he is then charged, and, of course, your verdict means that he is guilty of the offense charged. That is perfectly clear. But in considering this charge I instruct you that you are permitted to go to its real meaning, its real substance and real effect. That is, that these publications were false, that they were false in the respects which have been outlined to you by counsel. "Falsity" implies the thought which I expressed to you in my general charge. It really expresses more than that, because "Falsity" may exist in telling the truth *of* the party who makes the true statement tells only half the truth. There is a great deal in the old adage that the most dangerous kind of a lie is half of the truth, or the truth half told, or a statement which is part truth and part lie. It is the substantial thing which you are to consider.

The real offense with which these defendants are charged is in putting out these false statements. They received them from a source. That source purported to be the report of a despatch, and the evidence in this case would seem to direct your minds in at least some of these instances, perhaps in many of them, to just where the report of the despatch appeared. They took that report as it came to them, and the charge is, in plain words, that they garbled it, sometimes by adding something to it and sometimes by leaving things out and sometimes by a change of the words. But the substantial thing which you are to pass upon is, was the report or statement that they put out false? Was it wilfully and knowing- false? Was it
put out thus falsified with the intent to promote the success
811 of the enemies of the United States?

Mr. Gray: But, if your Honor pleases, the thought that I meant to convey I do not think your Honor has touched upon, and that is that each sub-head of the first count, and the first count in itself charges the falsity to be in the doing of a particular thing, whether that thing was an omission or a change or an addition, and what I ask you to say to the jury is——

The Court: I think I catch your point. I do not care to discuss it, but if you have no objection to my stating your point in my own way, I will. I understand that you are raising the point that here are certain despatches, original despatches, which emanated from certain authorized sources, and that this indictment charges these

defendants with a falsification of those despatches, and that tha
the thing this jury must find.

Mr. Gray: That is correct, sir. That is part of it.

The Court: I decline to so charge the jury.

Mr. Gray: Will your Honor grant me an exception?

The Court: I will allow an exception to the defendants.

(Exception noted for the defendants, individually and jointly,
direction of the court.)"

13. The learned Trial Judge erred in instructing the jury (Te
mony pp. 606-7), as follows:

"Mr. Gray: My point went a little farther than that. That
that they must find falsification, if it was falsification, in the man
alleged in the indictment. In other words, that is the falsificat
that they are to determine, and I intended to follow that up, an
will join it here, in asking your Honor to say to the jury that in c
in which the indictment charges the omission of anythi
812 and no proof has been offered to show any omission, t
have no right to consider the allegation in the indictme
which, of course, follows, ipso facto as proof of the charges th
selves. I mean to say that in one or two of those newspaper arti
they charge omission of things, and the indictment sets forth
things that are supposed to be omitted in the indictment, but th
is no evidence of the correctness of them.

The Court: Of course, gentlemen of the jury, you are not c
sidering the charge as proof. A charge proves nothing except
fact that a man is charged with crime, and it means nothing exc
that the official bodies connected with the administration of jus
deemed the case to be one to be submitted to you as a petit jury,
determine the truth or falsity of the charges, and you are to do th
of course, by looking to the proofs, and as I have already said to y
and as your own common sense and sense of justice would indic
to you, I am sure, you must find those proofs in the evidence. T
United States must bring home the proof of the charges as made, a
they must bring it home by submitting to you evidence which carr
to your minds a conviction of the truth of the charge, and carries
with the degree of certainty which is characterized by the expressi
"beyond a reasonable doubt."

14. The learned Trial Judge erred in instructing the jury (Te
mony p. 612), as follows:

"The Court: I will allow the exception, and to make that perfec
clear to you, gentlemen, I will illustrate what I mean. If a sta
ment were made, for illustration (and understand, you may c
sider this purely as a suppos-titious case, using it wholly for t
purpose of illustration),—if an article should be publish
813 to the effect that the majority of the people of the Unit
States were out of sympathy with their Government in t
prosecution of the war, I say to you that you may call upon yo
general knowledge to guide you to a conclusion as to whether or n
that statement is false, and then you may go to the question as
whether it was wilfull, whether the false statement was wilfully a

knowingly made, and whether it was made further with the intent to promote the success of the enemies of the United States. That is why I withdrew the use of the word "intent." That is why I withdraw that from my charge.

Mr. Gray: Will Your Honor give me an exception to the instructions you just gave the jury?

(Exception noted for the defendants as requested, individually and jointly, by direction of the court.)"

(Sgd.) WM. A. GRAY,
Attorney for Defendant.
HENRY JOHN NELSON,
Attorney for Defendant.

814 In the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

THE UNITED STATES

vs.

LOUIS WERNER, MARTIN DARKOW, PETER SCHAEFFER, PAUL VOGEL, and HERMAN LEMKE.

Petition of Louis Werner for Writ of Error.

(Filed Dec. 18, 1918.)

To the Honorable the Judges of the United States District Court for the Eastern District of Pennsylvania:

The Petition- Louis Werner respectfully represents:

1. That he, together with the other above named defendants, was indicted in the District Court of the United States for the Eastern District of Pennsylvania upon a bill of indictment, as of September Sessions, 1917, No. 89, charging making and conveying false reports to promote the success of the enemies of the United States, wilfully obstructing recruiting and enlistment service, and conspiracy to make false reports, etc.

2. At the December Sessions, 1917, to wit, on the seventeenth day of December, 1917, and before pleading or taking other steps in this case, your petitioner, by his counsel, filed a demurrer to the bill of indictment in said case, which said demurrer was, on the twenty-third day of January, 1918, overruled, to which ruling and decision of the Court in overruling the demurrer your petitioner, by his counsel, then and there excepted.

3. That at September Sessions, 1918, your petitioner, having been duly arraigned upon said indictment, pleaded not guilty thereto, and a jury was called and empanelled and your petitioner tried before said jury, and on September 27, 1918, the said jury rendered

815 a verdict of guilty as to counts ont, two, four and nine an
not guilty as to counts three, five, six, seven and eight.

4. That exceptions were taken to the rulings of said Court on th admission of evidence against your petitioner, on the rejection evidence in favor of your petitioner, to the charges and decisions the learned Judge upon the law and as to his refusal to instruct th Jury as requested in points for charge and a bill of exceptions ha been presented and signed and sealed by the learned Judge and file of record in said Court.

5. That a motion for a new trial on behalf of your petitioner wa made, assigning as reasons the errors on the part of the learned tria Judge in the admission of evidence against your petitioners, in th rejection of evidence in favor of your petitioners, the decisions of th said Judge upon the law in his charge to the jury and in his refus to instruct the jury as requested in points for charge, which motio for a new trial as aforesaid has been argued and refused.

6. That on the eighteenth day of December, 1918, your petitione was sentenced by the Court, the sentence being for the term five years from this date, in the United States Penitentiary at A lanta, Georgia.

7. The assignments of error have been filed with the Clerk of th District Court for the Eastern District of Pennsylvania, in accordanc with the Rules of Court.

8. Therefore your petitioner prays that a writ of error from th District Court of the United States for the Eastern District of Penn
sylvania to the Supreme Court of the United States be allowe
816 in the premises directed to the Clerk of the District Court
the United States for the Eastern District of Pennsylvania that a citation be issued returnable in thirty days upon the entry such security as may be directed by the Court, and that a supersedea and a stay of execution and proceedings in the said District Cour may be granted, pending such writ of error and appeal, and tha your petitioner be admitted to bail upon giving bond in such sum a the Court may direct.

And your petitioner will ever pray, etc.

LOUIS WERNER.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

The above named Louis Werner, being duly sworn according t law, on his oath, deposes and says that the facts set forth in the fore going petition by him subscribed, are true as therein stated.

LOUIS WERNER.

Sworn to and subscribed before me this 18th day of December A. D. 1918.

CHARLES F. FUNDINGER,
Deputy Clerk U. S. District Court,
Eastern District of Penna.

Before Dickinson, J.

Prayer of Petition granted.
By the Court:
Attest:

E. G. JOHNSON,
Deputy Clerk.

817 In the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

THE UNITED STATES

vs.

LOUIS WERNER, MARTIN DARKOW, PETER SCHAEFFER, PAUL VOGEL, and HERMAN LEMKE.

Assignments of Error of Louis Werner.

(Filed Dec. 18, 1918.)

1. Sections 3 and 4, of Title 1, of the Act of June 15, 1917, under which the indictment in the above case was found, are unconstitutional and void.

2. The learned Court erred in overruling the demurrer filed by the defendant to the bill of indictment in the above case.

3. The learned trial Judge erred in refusing to permit a challenge to be exercised on behalf of the defendants with reference to the juror George Kimball (Testimony pp. 74 & 75), as follows:

"Mr. Gray: I challenge on behalf of all of the defendants.

Mr. Roberts: I ask that the challenge be not sustained, as the defendants have now exercised ten peremptory challenges, and have exhausted their rights in that behalf.

Mr. Gray: Your Honor understands that it is because of the feeling that I have, that that act trespasses upon the constitutional rights of the defendants, that I am exercising this right of challenge now, or claiming the right to challenge.

The Court: I understand, Mr. Gray, considering all the defendants as a single party, to quote the phraseology of the act,
818 there have been ten peremptory challenges exercised.

Mr. Gray: I do not know just what view your Honor takes of it, but——

The Court: I mean there is no question as to the number.

Mr. Gray: There is no question, if your Honor will let me put it in my way, that the aggregate of the challenges exercised by the individual defendants is now ten, but not all of the defendants at the bar of this court have expressed their wish to challenge anywheres

near that number, and, therefore, I suggest to your Honor that, not having expressed their desire to challenge anywheres near that number, they are not bound by what their co-defendants may have done with respect to any particular juror, and that, therefore, they are still within their rights.

The Court: I rule that under the provisions of this Act of Congress all the defendants will be deemed a single party, and ten challenges having been exercised in the aggregate, the right of challenge is exhausted. I will give each of the defendants individually and jointly an exception.

Mr. Gray: I ask for an exception to your Honor's ruling, and so that I may have it stated in another way, I ask for an exception to the refusal of your Honor to permit this challenge to be made.

(Exception noted for the defendant-, individually and jointly, as requested, by direction of the Court.)"

4. The learned Trial Judge erred in refusing to instruct the jury to render a verdict of not guilty as to all of the defendants upon all of the counts of the bill of indictment (Testimony p. 819 577), as follows:

"I, therefore ask your Honor to instruct the jury to render a verdict of "Not Guilty" as to all of the defendants upon all of the counts.

(Motion overruled.)

(Exception noted for the defendants, individually and jointly, by direction of the court.)"

5. The learned Trial Judge erred in refusing to instruct the jury to render a verdict of not guilty as to all of the defendants upon the first count of the bill of indictment (Testimony p. 578), as follows:

"Mr. Gray: I request your Honor to instruct the jury to render a verdict of "Not Guilty" as to all of the defendants upon the first count.

(Motion overruled.)

(Exception noted for the defendants, individually and jointly, by direction of the Court.)"

6. The learned Trial Judge erred in refusing to instruct the jury separately to render a verdict of not guilty upon each of the several counts from 2 to 9, inclusive (Testimony p. 578), as follows:

"Mr. Gray: I make the same motion separately as to each of the remaining counts, which are 2 to 9 inclusive as to all of the defendants.

(Motion overruled.)

(Exception noted for the defendants, individually and jointly, by direction of the Court.)"

7. The learned Trial Judge erred in instructing the jury as follows (Testimony p. 586):

"You will observe that the law applies only when we are in a

state of war, in times of war, and that its general purpose
820 is to protect, to preserve, rather, our military strength and efficiency, to protect ourselves against anything which would promote the success of our enemies by undermining our morale, lessening our will to win, or, as it is commonly expressed, our will to conquer, interfering with our military strength, by creating divisions among our people, hampering our military organization by promoting insubordination among our troops, or obstructing enlistments or enrollments. Bear in mind, the idea is to prohibit these things against even the possibility of the dangerous consequences which may follow." (Exception allowed.)

8. The learned Trial Judge erred in instructing the jury (Testimony pp. 588-9), as follows:

"These acts which are prohibited are treasonable in the sense in which that word is used, in the common speech of the people. Indeed, they may constitute legal treason as defined in some jurisdictions, but they are not treason against the United States, for the simple reason that there is a provision in our constitution, (which, of course, the Acts of Congress follow), that treason against the United States,—you will observe it does not say "treason generally," but treason against the United States shall consist only in making war upon them, or in adhering to their enemies, giving them aid and comfort, and there is another provision to the effect that no person can be convicted of the crime of treason unless there are two witnesses to the same overt act, making, as you will see, it perfectly clear that mere words, whether published or not, as long as they are mere words, do not constitute the crime of treason, but they must
be words uttered and published under such circumstances
821 as to become deeds or acts in themselves, as "words" may be. So that words, unless there is something to which they may attach and unless the direct, natural, and reasonably to be expected consequences of them would be to give aid and comfort to the enemy, do not constitute the crime of treason. Every man will observe, however, that even mere words may be fraught with consequences which, although too remote to constitute the crime of treason, may nevertheless be words which are fraught with most awful consequences and possibilities of evil, and, therefore, it is properly within the province of the law to prohibit, under circumstances which the law may define, and make it a crime even to utter them. In substance, that is what this law does. Congress could not call some mere words treason, because the Constitution prohibits it, but there is no constitutional limitation of the power of Congress to declare those things a crime against the law which Congress has done in this act to which I have adverted." (Exception allowed.)

9. The learned Trial Judge erred in instructing the jury (Testimony pp. 592-3), as follows:

"With respect to intent, to promote the success of our enemies. Let me distinguish here between "intent" and "Motive" in the sense of something which moves a person to do an act. It is conceivable—indeed there has been some evidence of that actual condition

here—that a person without any attitude of mind of friendliness to the enemy or of enmity to us might do something with the purpose and intent to promote the success of the enemy, and his motive for doing it might be, for illustration, a mercenary motive. He might not do it actuated by the motive that he wished to promote the success of the enemy. His real motive might be what I
822 have characterized as a mercenary one, the desire to make some money out of the act, but if his intent was to promote the success of the enemy, the motive would not excuse him, and indeed, such a motive as I have instanced would be regarded by most men ethically, at least, as an aggravation of the offense. And so with respect to any other motive which might actuate a man. It is imaginable, although it is difficult to conceive that a man would be in such a state of mind, but, nevertheless, it is imaginable that a man might be so devoted, for illustration, to the doctrine of non-resistance as that he might believe that it was his duty, and the duty of the Nation to which he belonged, to offer no resistance to any injury or any indignity however great which might be imposed upon him, and influenced by a motive of that kind, he might do an act, intending to promote the success of the enemy, by bringing about a lack of preparation on the part of ourselves.

What we are concerned with is that intent, and not the motive which sets the act in motion as distinguished from the intent." (Exception allowed.)

10. The learned Trial Judge erred in instructing the jury (Testimony, pp. 595-6), as follows:

"In determining this question, (and I say again that I have not attempted to give you a technically accurate enumeration of everything which is in this act, I refer you again to the language of the act to make it complete, if I have omitted anything), but in passing upon this question of falsity and in passing upon this question of intent and in passing upon, of course, the question of whether or not we are at war, you are permitted to use your general knowledge. I will withdraw the reference to "intent," but in
823 passing upon the question of whether we are at war, and in passing upon any other questions which are in like manner a matter of public knowledge and general information, you have the right to call upon the fund of general information which is in your keeping." (Exception allowed.)

11. The learned Trial Judge erred in instructing the jury as follows (Testimony p. 597):

"Upon the question of publication. You have the right to take that up in any order which seems proper to your mind. There was a publication. It necessarily follows that someone was concerned in that publication and the actors in it. You have been given evidence here as to the official relations of the defendants to this publication, what their duties were, what those duties involved. You know that this publication issued from a certain place and from a certain office, and by the process of elimination you have been given aid in drawing an inference as to the part of each in the publication, and in addition to that you have now in the case the admissions made by the

several defendants themselves in their testimony." (Exception allowed.)

12. The learned Trial Judge erred in instructing the jury (Testimony pp. 604-5-6), as follows:

"Mr. Gray: If your Honor pleases, I ask your Honor to instruct the jury with respect to the first count in the Bill of Indictment, that before they can convict any of the defendants they must find not only what you have instructed them with reference to that defendant, but that the article alleged to have been published was false as charged in the indictment, in that it differed from the original report as set forth in the indictment. In other words, that they cannot convict them unless they find the charge as laid in the indictment to be so.

824 The Court: Gentlemen of the jury, perhaps it might be well for me to detain you just a moment upon a discussion of that thought.

Of course, it is true that in the trial of any case a man cannot be convicted of any other offense than the offense with which he is then charged, and, of course, your verdict means that he is guilty of the offense charged. That is perfectly clear. But in considering this charge I instruct you that you are permitted to go to its real meaning, its real substance and real effect. That is, that these publications were false, that they were false in the respects which have been outlined to you by counsel. "Falsity" implies the thought which I expressed to you in my general charge. It really expresses more than that, because "Falsity" may exist in telling the truth *of* the party who makes the true statement tells only half the truth. There is a great deal in the old adage that the most dangerous kind of a lie is half of the truth, or the truth half told, or a statement which is part truth and part lie. It is the substantial thing which you are to consider.

The real offense with which these defendants are charged is in putting out these false statements. They received them from a source. That source purported to be the report of a despatch, and the evidence in this case would seem to direct your minds in at least some of these instances, perhaps in many of them, to just where the report of the despatch appeared. They took that report as it came to them, and the charge is, in plain words, that they garbled it, sometimes by adding something to it and sometimes by leaving things out and sometimes by a change of the words. But the substantial thing which you are to pass upon is, was the report or statement that they put out false? Was it wilfully and knowing- false? Was it put out thus falsified with the intent to promote the success

825 of the enemies of the United States?

Mr. Gray: But, if your Honor pleases, the thought that I meant to convey I do not think your Honor has touched upon, and that is that each sub-head of the first count, and the first count in itself charges the falsity to be in the doing of a particular thing, whether that thing was an omission or a change or an addition, and what I ask you to say to the jury is——

The Court: I think I catch your point. I do not care to discuss it, but if you have no objection to my stating your point in my own way, I will. I understand that you are raising the point that here are certain despatches, original despatches, which emanated from certain authorized sources, and that this indictment charges these defendants with a falsification of those despatches, and that that is the thing this jury must find.

Mr. Gray: That is correct, sir. That is part of it.

The Court: I decline to so charge the jury.

Mr. Gray: Will your Honor grant me an exception?

The Court: I will allow an exception to the defendants.

(Exception noted for the defendants, individually and jointly, by direction of the court.)"

13. The learned Trial Judge erred in instructing the jury (Testimony pp. 606-7), as follows:

"Mr. Gray: My point went a little farther than that. That is, that they must find falsification, if it was falsification, in the manner alleged in the indictment. In other words, that is the falsification that they are to determine, and I intended to follow that up, and I will join it here, in asking your Honor to say to the jury that in cases in which the indictment charges the omission of anything,
826 and no proof has been offered to show any omission, they have no right to consider the allegation in the indictment, which, of course, follows, ipso facto as proof of the charges themselves. I mean to say that in one or two of those newspaper articles they charge omission of things, and the indictment sets forth the things that are supposed to be omitted in the indictment, but there is no evidence of the correctness of them.

The Court: Of course, gentlemen of the jury, you are not considering the charge as proof. A charge proves nothing except the fact that a man is charged with crime, and it means nothing except that the official bodies connected with the administration of justice deemed the case to be one to be submitted to you as a petit jury, to determine the truth or falsity of the charges, and you are to do that, of course, by looking to the proofs, and as I have already said to you, and as your own common sense and sense of justice would indicate to you, I am sure, you must find those proofs in the evidence. The United States must bring home the proof of the charges as made, and they must bring it home by submitting to you evidence which carries to your minds a conviction of the truth of the charge, and carries it with the degree of certainty which is characterized by the expression "beyond a reasonable doubt."

14. The learned Trial Judge erred in instructing the jury (Testimony p. 612), as follows:

"The Court: I will allow the exception, and to make that perfectly clear to you, gentlemen, I will illustrate what I mean. If a statement were made, for illustration, (and understand, you may consider this purely as a suppos-titious case, using it wholly for the purpose of illustration),—if an article should be published

827 to the effect that the majority of the people of the United States were out of sympathy with their Government in the prosecution of the war, I say to you that you may call upon your general knowledge to guide you to a conclusion as to whether or not that statement is false, and then you may go to the question as to whether it was wilfull, whether the false statement was wilfully and knowingly made, and whether it was made further with the intent to promote the success of the enemies of the United States. That is why I withdrew the use of the word "intent." That is why I withdraw that from my charge.

Mr. Gray: Will Your Honor give me an exception to the instructions you just gave the jury?

(Exception noted for the defendants as requested, individually and jointly, by direction of the court.)"

(Sgd.) WM. A. GRAY,
Attorney for Defendant.

828 In the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

THE UNITED STATES

vs.

LOUIS WERNER, MARTIN DARKOW, PETER SCHAEFFER, PAUL VOGEL and HERMAN LEMKE.

Petition of Martin Darkow for Writ of Error.

(Filed Dec. 18, 1918.)

To the Honorable the Judges of the United States District Court for the Eastern District of Pennsylvania:

The Petition- Martin Darkow respectfully represents:

1. That he, together with the other above named defendants, was indicted in the District Court of the United States for the Eastern District of Pennsylvania upon a bill of indictment, as of September Sessions, 1917, No. 89, charging making and conveying false reports to promote the success of the enemies of the United States, wilfully obstructing recruiting and enlistment service, and conspiracy to make false reports, etc.

2. At the December Sessions, 1917, to wit, on the seventeenth day of December, 1917, and before pleading or taking other steps in this case, your petitioner, by his counsel, filed a demurrer to the bill of indictment in said case, which said demurrer was, on the twenty-third day of January, 1918, overruled, to which ruling and decision of the Court in overruling the demurrer your petitioner, by his counsel, then and there excepted.

3. That at September Sessions, 1918, your petitioner, having bee
duly arraigned upon said indictment, pleaded not guilty thereto, an
a jury was called and empanelled and your petitioner tried befo
said jury, and on September 27, 1918, the said jury rendere
829 a verdict of guilty as to counts one, three, five, six and nin
and not guilty as to counts two, four, seven and eight.

4. That exceptions were taken to the rulings of said Court on th
admission of evidence against your petitioner, on the rejection
evidence in favor of your petitioner, to the charges and decisions
the learned Judge upon the law and as to his refusal to instruct th
Jury as requested in points for charge and a bill of exceptions ha
been presented and signed and sealed by the learned Judge and file
of record in said Court.

5. That a motion for a new trial on behalf of your petitioner wa
made, assigning as reasons the errors on the part of the learned tri
Judge in the admission of evidence against your petitioners, in th
rejection of evidence in favor of your petitioners, the decisions of th
said Judge upon the law in his charge to the jury and in his refus
to instruct the jury as requested in points for charge, which motio
for a new trial as aforesaid has been argued and refused.

6. That on the eighteenth day of December, 1918, your petitione
was sentenced by the Court, the sentence being for the term
five years from this date, in the United States Penitentiary at A
lanta, Georgia.

7. The assignments of error have been filed with the Clerk of th
District Court for the Eastern District of Pennsylvania, in accordan
with the Rules of Court.

8. Therefore your petitioner prays that a writ of error from th
District Court of the United States for the Eastern District of Pen
sylvania to the Supreme Court of the United States be allowe
830 in the premises directed to the Clerk of the District Court
the United States for the Eastern District of Pennsylvania
that a citation be issued returnable in thirty days upon the entry
such security as may be directed by the Court, and that a supersedea
and a stay of execution and proceedings in the said District Cou
may be granted, pending such writ of error and appeal, and tha
your petitioner be admitted to bail upon giving bond in such sum
the Court may direct.

And your petitioner will ever pray, etc.

MARTIN DARKOW.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

The above named Martin Darkow, being duly sworn according
law, on his oath, deposes and says that the facts set forth in the for
going petition by him subscribed, are true as therein stated.

MARTIN DARKOW.

Sworn to and subscribed before me this 18th day of December, A. D. 1918.

CHARLES F. FUNDINGER,
Deputy Clerk U. S. District Court,
Eastern District of Penna.

Before Dickinson, J.

Prayer of Petition granted.
By the Court:
Attest:

E. G. JOHNSON,
Deputy Clerk.

831 In the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

THE UNITED STATES

vs.

LOUIS WERNER, MARTIN DARKOW, PETER SCHAEFFER, PAUL VOGEL, and HERMAN LEMKE.

Assignments of Error of Martin Darkow.

(Filed Dec. 18, 1918.)

1. Sections 3 and 4, of Title 1, of the Act of June 15, 1917, under which the indictment in the above case was found, are unconstitutional and void.

2. The learned Court erred in overruling the demurrer filed by the defendant to the bill of indictment in the above case.

3. The learned trial Judge erred in refusing to permit a challenge to be exercised on behalf of the defendants with reference to the juror George Kimball (Testimony pp. 74 & 75), as follows:

"Mr. Gray: I challenge on behalf of all of the defendants.

Mr. Roberts: I ask that the challenge be not sustained, as the defendants have now exercised ten peremptory challenges, and have exhausted their rights in that behalf.

Mr. Gray: Your Honor understands that it is because of the feeling that I have, that that act trespasses upon the constitutional rights of the defendants, that I am exercising this right of challenge now, or claiming the right to challenge.

The Court: I understand, Mr. Gray, considering all the defendants as a single party, to quote the phraseology of the act,
832 there have been ten peremptory challenges exercised.

Mr. Gray: I do not know just what view your Honor takes of it, but——

The Court: I mean there is no question as to the number.

Mr. Gray: There is no question, if your Honor will let me put it in my way, that the aggregate of the challenges exercised by the individual defendants is now ten, but not all of the defendants at the bar of this court have expressed their wish to challenge anywheres near that number, and, therefore, I suggest to your Honor that, not having expressed their desire to challenge anywheres near that number, they are not bound by what their co-defendants may have done with respect to any particular juror, and that, therefore, they are still within their rights.

The Court: I rule that under the provisions of this Act of Congress all the defendants will be deemed a single party, and ten challenges having been exercised in the aggregate, the right of challenge is exhausted. I will give each of the defendants individually and jointly an exception.

Mr. Gray: I ask for an exception to your Honor's ruling, and so that I may have it stated in another way, I ask for an exception to the refusal of your Honor to permit this challenge to be made.

(Exception noted for the defendant-, individually and jointly, as requested, by direction of the Court.)"

4. The learned Trial Judge erred in refusing to instruct the jury to render a verdict of not guilty as to all of the defendants upon all of the counts of the bill of indictment (Testimony p. 833 577), as follows:

"I, therefore ask your Honor to instruct the jury to render a verdict of "Not Guilty" as to all of the defendants upon all the counts.

(Motion overruled.)

(Exception noted for the defendants, individually and jointly, by direction of the court.)"

5. The learned Trial Judge erred in refusing to instruct the jury to render a verdict of not guilty as to all of the defendants upon the first count of the bill of indictment (Testimony p. 578), as follows:

"Mr. Gray: I request your Honor to instruct the jury to render a verdict of "Not Guilty" as to all of the defendants upon the first count.

(Motion overruled.)

(Exception noted for the defendants, individually and jointly, by direction of the Court.)"

6. The learned Trial Judge erred in refusing to instruct the jury separately to render a verdict of not guilty upon each of the several counts from 2 to 9, inclusive (Testimony p. 578), as follows:

"Mr. Gray: I make the same motion separately as to each of the remaining counts, which are 2 to 9 inclusive as to all of the defendants.

(Motion overruled.)

(Exception noted for the defendants, individually and jointly, by direction of the Court.)"

7. The learned Trial Judge erred in instructing the jury as follows (Testimony p. 586):

"You will observe that the law applies only when we are in a state of war, in times of war, and that its general purpose
834 is to protect, to preserve, rather, our military strength and efficiency, to protect ourselves against anything which would promote the success of our enemies by undermining our morale, lessening our will to win, or, as it is commonly expressed, our will to conquer, interfering with our military strength, by creating divisions among our people, hampering our military organization by promoting insubordination among our troops, or obstructing enlistments or enrollments. Bear in mind, the idea is to prohibit these things against even the possibility of the dangerous consequences which may follow." (Exception allowed.)

8. The learned Trial Judge erred in instructing the jury (Testimony pp. 588-9), as follows:

"These acts which are prohibited are treasonable in the sense in which that word is used, in the common speech of the people. Indeed, they may constitute legal treason as defined in some jurisdictions, but they are not treason against the United States, for the simple reason that there is a provision in our constitution, (which, of course, the Acts of Congress follow), that treason against the United States,—you will observe it does not say "treason generally," but treason against the United States shall consist only in making war upon them, or in adhering to their enemies, giving them aid and comfort, and there is another provision to the effect that no person can be convicted of the crime of treason unless there are two witnesses to the same overt act, making, as you will see, it perfectly clear that mere words, whether published or not, as long as they are mere words, do not constitute the crime of treason, but they must be words uttered and published under such circumstances
835 as to become deeds or acts in themselves, as "words" may be. So that words, unless there is something to which they may attach and unless the direct, natural, and reasonably to be expected consequences of them would be to give aid and comfort to the enemy, do not constitute the crime of treason. Every man will observe, however, that even mere words may be fraught with consequences which, although too remote to constitute the crime of treason, may nevertheless be words which are fraught with most awful consequences and possibilities of evil, and, therefore, it is properly within the province of the law to prohibit, under circumstances which the law may define, and make it a crime even to utter them. In substance, that is what this law does. Congress could not call some mere words treason, because the Constitution prohibits it, but there is no constitutional limitation of the power of Congress to declare those things a crime against the law which Congress has done in this act to which I have adverted." (Exception allowed.)

9. The learned Trial Judge erred in instructing the jury (Testimony pp. 592-3), as follows:

"With respect to intent, to promote the success of our enemies. Let me distinguish here between "intent" and "Motive" in the sense of something which moves a person to do an act. It is conceivable—indeed there has been some evidence of that actual condition here—that a person without any attitude of mind of friendliness to the enemy or of enmity to us might do something with the purpose and intent to promote the success of the enemy, and his motive for doing it might be, for illustration, a mercenary motive. He might not do it actuated by the motive that he wished to promote the success of the enemy. His real motive might be what I
836 have characterized as a mercenary one, the desire to make some money out of the act, but if his intent was to promote the success of the enemy, the motive would not excuse him, and indeed, such a motive as I have instanced would be regarded by most men ethically, at least, as an aggravation of the offense. And so with respect to any other motive which might actuate a man. It is imaginable, although it is difficult to conceive that a man would be in such a state of mind, but, nevertheless, it is imaginable that a man might be so devoted, for illustration, to the doctrine of non-resistance as that he might believe that it was his duty, and the duty of the Nation to which he belonged, to offer no resistance to any injury or any indignity however great which might be imposed upon him, and influenced by a motive of that kind, he might do an act, intending to promote the success of the enemy, by bringing about a lack of preparation on the part of ourselves.

What we are concerned with is that intent, and not the motive which sets the act in motion as distinguished from the intent." (Exception allowed.)

10. The learned Trial Judge erred in instructing the jury (Testimony, pp. 595-6), as follows:

"In determining this question, (and I say again that I have not attempted to give you a technically accurate enumeration of everything which is in this act, I refer you again to the language of the act to make it complete, if I have omitted anything), but in passing upon this question of falsity and in passing upon this question of intent and in passing upon, of course, the question of whether or not we are at war, you are permitted to use your general knowledge. I will withdraw the reference to "intent," but in
837 passing upon the question of whether we are at war, and in passing upon any other questions which are in like manner a matter of public knowledge and general information, you have the right to call upon the fund of general information which is in your keeping." (Exception allowed.)

11. The learned Trial Judge erred in instructing the jury as follows (Testimony p. 597):

"Upon the question of publication. You have the right to take that up in any order which seems proper to your mind. There was a publication. It necessarily follows that someone was concerned in

that publication and the actors in it. You have been given evidence here as to the official relations of the defendants to this publication, what their duties were, what those duties involved. You know that this publication issued from a certain place and from a certain office, and by the process of elimination you have been given aid in drawing an inference as to the part of each in the publication, and in addition to that you have now in the case the admissions made by the several defendants themselves in their testimony." (Exception allowed.)

12. The learned Trial Judge erred in instructing the jury (Testimony pp. 604-5-3), as follows:

"Mr. Gray: If your Honor pleases, I ask your Honor to instruct the jury with respect to the first count in the Bill of Indictment, that before they can convict any of the defendants they must find not only what you have instructed them with reference to that defendant, but that the article alleged to have been published was false as charged in the indictment, in that it differed from the original report as set forth in the indictment. In other words, that they cannot convict them unless they find the charge as laid in the indictment to be so.

The Court: Gentlemen of the jury, perhaps it might be
838 well for me to detain you just a moment upon a discussion of that thought.

Of course, it is true that in the trial of any case a man cannot be convicted of any other offense than the offense with which he is then charged, and, of course, your verdict means that he is guilty of the offense charged. That is perfectly clear. But in considering this charge I instruct you that you are permitted to go to its real meaning, its real substance and real effect. That is, that these publications were false, that they were false in the respects which have been outlined to you by counsel. "Falsity" implies the thought which I expressed to you in my general charge. It really expresses more than that, because "Falsity" may exist in telling the truth *of* the party who makes the true statement tells only half the truth. There is a great deal in the old adage that the most dangerous kind of a lie is half of the truth, or the truth half told, or a statement which is part truth and part lie. It is the substantial thing which you are to consider.

The real offense with which these defendants are charged is in putting out these false statements. They received them from a source. That source purported to be the report of a despatch, and the evidence in this case would seem to direct your minds in at least some of these instances, perhaps in many of them, to just where the report of the despatch appeared. They took that report as it came to them, and the charge is, in plain words, that they garbled it, sometimes by adding something to it and sometimes by leaving things out and sometimes by a change of the words. But the substantial thing which you are to pass upon is, was the report or statement that they put out false? Was it wilfully and knowing- false? Was it

put out thus falsified with the intent to promote the success
839 of the enemies of the United States?

Mr. Gray: But, if your Honor pleases, the thought that I meant to convey I do not think your Honor has touched upon, and that is that each sub-head of the first count, and the first count in itself charges the falsity to be in the doing of a particular thing whether that thing was an omission or a change or an addition, and what I ask you to say to the jury is——

The Court: I think I catch your point. I do not care to discuss it, but if you have no objection to my stating your point in my own way, I will. I understand that you are raising the point that here are certain despatches, original despatches, which emanated from certain authorized sources, and that this indictment charges these defendants with a falsification of those despatches, and that that is the thing this jury must find.

Mr. Gray: That is correct, sir. That is part of it.

The Court: I decline to so charge the jury.

Mr. Gray: Will your Honor grant me an exception?

The Court: I will allow an exception to the defendants.

(Exception noted for the defendants, individually and jointly, by direction of the court.)"

13. The learned Trial Judge erred in instructing the jury (Testimony pp. 606-7), as follows:

"Mr. Gray: My point went a little farther than that. That is, that they must find falsification, if it was falsification, in the manner alleged in the indictment. In other words, that is the falsification that they are to determine, and I intended to follow that up, and I will join it here, in asking your Honor to say to the jury that in cases
in which the indictment charges the omission of anything,
840 and no proof has been offered to show any omission, they have no right to consider the allegation in the indictment, which, of course, follows, ipso facto as proof of the charges themselves. I mean to say that in one or two of those newspaper articles they charge omission of things, and the indictment sets forth the things that are supposed to be omitted in the indictment, but there is no evidence of the correctness of them.

The Court: Of course, gentlemen of the jury, you are not considering the charge as proof. A charge proves nothing except the fact that a man is charged with crime, and it means nothing except that the official bodies connected with the administration of justice deemed the case to be one to be submitted to you as a petit jury, to determine the truth or falsity of the charges, and you are to do that, of course, by looking to the proofs, and as I have already said to you, and as your own common sense and sense of justice would indicate to you, I am sure, you must find those proofs in the evidence. The United States must bring home the proof of the charges as made, and they must bring it home by submitting to you evidence which carries to your minds a conviction of the truth of the charge, and carries it with the degree of certainty which is characterized by the expression "beyond a reasonable doubt."

14. The learned Trial Judge erred in instructing the jury (Testimony p. 612), as follows:

"The Court: I will allow the exception, and to make that perfectly clear to you, gentlemen, I will illustrate what I mean. If a statement were made, for illustration, (and understand, you may consider this purely as a suppos-titious case, using it wholly for the purpose of illustration),—if an article should be published
841 to the effect that the majority of the people of the United States were out of sympathy with their Government in the prosecution of the war, I say to you that you may call upon your general knowledge to guide you to a conclusion as to whether or not that statement is false, and then you may go to the question as to whether it was wilfull, whether the false statement was wilfully and knowingly made, and whether it was made further with the intent to promote the success of the enemies of the United States. That is why I withdrew the use of the word "intent." That is why I withdraw that from my charge.

Mr. Gray: Will Your Honor give me an exception to the instructions you just gave the jury?

(Exception noted for the defendants as requested, individually and jointly, by direction of the court.)"

(Sgd.) WM. A. GRAY,
Attorney for Defendant.

842 In the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

THE UNITED STATES

vs.

LOUIS WERNER, MARTIN DARKOW, PETER SCHAEFFER, PAUL VOGEL, and HERMAN LEMKE.

Petition of Herman Lemke for Writ of Error.

(Filed Dec. 18, 1918.)

To the Honorable the Judges of the United States District Court for the Eastern District of Pennsylvania:

The Petition- Herman Lemke respetfully represents:

1. That he, together with the other above named defendants, was indicted in the District Court of the United States for the Eastern District of Pennsylvania upon a bill of indictment, as of September Sessions, 1917, No. 89, charging making and conveying false reports to promote the success of the enemies of the United States, wilfully obstructing recruiting and enlistment service, and conspiracy to make false reports, etc.

2. At the December Sessions, 1917, to wit, on the seventeenth day of December, 1917, and before pleading or taking other steps in this case, your petitioner, by his counsel, filed a demurrer to the bill of indictment in said case, which said demurrer was, on the twenty third day of January, 1918, overruled, to which ruling and decision of the Court in overruling the demurrer your petitioner, by his counsel, then and there excepted.

3. That at September Sessions, 1918, your petitioner, having been duly arraigned upon said indictment, pleaded not guilty thereto, and a jury was called and empanelled and your petitioner tried before said jury, and on September 27, 1918, the said jury rendered
843 a verdict of guilty as to count nine and not guilty as to counts one to eight inclusive.

4. That exceptions were taken to the rulings of said Court on the admission of evidence against your petitioner, on the rejection of evidence in favor of your petitioner, to the charges and decisions of the learned Judge upon the law and as to his refusal to instruct the Jury as requested in points for charge and a bill of exceptions has been presented and signed and sealed by the learned Judge and filed of record in said Court.

5. That a motion for a new trial on behalf of your petitioner was made, assigning as reasons the errors on the part of the learned trial Judge in the admission of evidence against your petitioners, in the rejection of evidence in favor of your petitioners, the decisions of the said Judge upon the law in his charge to the jury and in his refusal to instruct the jury as requested in points for charge, which motion for a new trial as aforesaid has been argued and refused.

6. That on the eighteenth day of December, 1918, your petitioner was sentenced by the Court, the sentence being for the term of two years from this date, in the United States Penitentiary at Atlanta, Georgia.

7. The assignments of error have been filed with the Clerk of the District Court for the Eastern District of Pennsylvania, in accordance with the Rules of Court.

8. Therefore your petitioner prays that a writ of error from the District Court of the United States for the Eastern District of Pennsylvania to the Supreme Court of the United States be allowed
844 in the premises directed to the Clerk of the District Court of the United States for the Eastern District of Pennsylvania; that a citation be issued returnable in thirty days upon the entry of such security as may be directed by the Court, and that a supersedeas and a stay of execution and proceedings in the said District Court may be granted, pending such writ of error and appeal, and that your petitioner be admitted to bail upon giving bond in such sum as the Court may direct.

And your petitioner will ever pray, etc.

HERMAN LEMKE.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

The above named Herman Lemke, being duly sworn according to law, on his oath, deposes and says that the facts set forth in the foregoing petition by him subscribed, are true as therein stated.

HERMAN LEMKE.

Sworn to and subscribed before me this 18th day of December, A. D. 1918.

CHARLES F. FUNDINGER,
Deputy Clerk U. S. District Court,
Eastern District of Penna.

Before Dickinson, J.

Prayer of Petition granted.
By the Court:
Attest:

E. G. JOHNSON,
Deputy Clerk.

845 In the District Court of the United States for the Eastern District of Pennsylvania, September Sessions, 1917.

No. 89.

THE UNITED STATES

vs.

LOUIS WERNER, MARTIN DARKOW, PETER SCHAEFFER, PAUL VOGEL, and HERMAN LEMKE.

Assignments of Error of Herman Lemke.

(Filed Dec. 18, 1918.)

1. Sections 3 and 4, of Title 1, of the Act of June 15, 1917, under which the indictment in the above case was found, are unconstitutional and void.

2. The learned Court erred in overruling the demurrer filed by the defendant to the bill of indictment in the above case.

3. The learned trial Judge erred in refusing to permit a challenge to be exercised on behalf of the defendants with reference to the juror George Kimball (Testimony pp. 74 & 75), as follows:

"Mr. Gray: I challenge on behalf of all of the defendants.

Mr. Roberts: I ask that the challenge be not sustained, as the defendants have now exercised ten peremptory challenges, and have exhausted their rights in that behalf.

Mr. Gray: Your Honor understands that it is because of the feeling that I have, that that act trespasses upon the constitutional rights of the defendants, that I am exercising this right of challenge now, or claiming the right to challenge.

The Court: I understand, Mr. Gray, considering all the defendants as a single party, to quote the phraseology of the act,
846 there have been ten peremptory challenges exercised.

Mr. Gray: I do not know just what view your Honor takes of it, but——

The Court: I mean there is no question as to the number.

Mr. Gray: There is no question, if your Honor will let me put it in my way, that the aggregate of the challenges exercised by the individual defendants is now ten, but not all of the defendants at the bar of this court have expressed their wish to challenge anywheres near that number, and, therefore, I suggest to your Honor that, not having expressed their desire to challenge anywheres near that number, they are not bound by what their co-defendants may have done with respect to any particular juror, and that, therefore, they are still within their rights.

The Court: I rule that under the provisions of this Act of Congress all the defendants will be deemed a single party, and ten challenges having been exercised in the aggregate, the right of challenge is exhausted. I will give each of the defendants individually and jointly an exception.

Mr. Gray: I ask for an exception to your Honor's ruling, and so that I may have it stated in another way, I ask for an exception to the refusal of your Honor to permit this challenge to be made.

(Exception noted for the defendant-, individually and jointly, as requested, by direction of the Court.)"

4. The learned Trial Judge erred in refusing to instruct the jury to render a verdict of not guilty as to all of the defendants upon all of the counts of the bill of indictment (Testimony p.
847 577), as follows:

"I, therefore ask your Honor to instruct the jury to render a verdict of "Not Guilty" as to all of the defendants upon all the counts.

(Motion overruled.)

(Exception noted for the defendants, individually and jointly, by direction of the court.)"

5. The learned Trial Judge erred in refusing to instruct the jury separately to render a verdict of not guilty upon each of the several counts from 2 to 9, inclusive (Testimony p. 578), as follows:

"Mr. Gray: I make the same motion separately as to each of the remaining counts, which are 2 to 9 inclusive as to all of the defendants.

(Motion overruled.)

(Exception noted for the defendants, individually and jointly, by direction of the Court.)"

6. The learned Trial Judge erred in instructing the jury as follows (Testimony p. 586):

"You will observe that the law applies only when we are in a state of war, in times of war, and that its general purpose
848 is to protect, to preserve, rather, our military strength and efficiency, to protect ourselves against anything which would promote the success of our enemies by undermining our morale, lessening our will to win, or, as it is commonly expressed, our will to conquer, interfering with our military strength, by creating divisions among our people, hampering our military organization by promoting insubordination among our troops, or obstructing enlistments or enrollments. Bear in mind, the idea is to prohibit these things against even the possibility of the dangerous consequences which may follow." (Exception allowed.)

8. The learned Trial Judge erred in instructing the jury (Testimony pp. 588-9), as follows:

"These acts which are prohibited are treasonable in the sense in which that word is used, in the common speech of the people. Indeed, they may constitute legal treason as defined in some jurisdictions, but they are not treason against the United States, for the simple reason that there is a provision in our constitution, (which, of course, the Acts of Congress follow), that treason against the United States,—you will observe it does not say "treason generally," but treason against the United States shall consist only in making war upon them, or in adhering to their enemies, giving them aid and comfort, and there is another provision to the effect that no person can be convicted of the crime of treason unless there are two witnesses to the same overt act, making, as you will see, it perfectly clear that mere words, whether published or not, as long as they are mere words, do not constitute the crime of treason, but they must be words uttered and published under such circumstances
849 as to become deeds or acts in themselves, as "words" may be. So that words, unless there is something to which they may attach and unless the direct, natural, and reasonably to be expected consequences of them would be to give aid and comfort to the enemy, do not constitute the crime of treason. Every man will observe, however, that even mere words may be fraught with consequences which, although too remote to constitute the crime of treason, may nevertheless be words which are fraught with most awful consequences and possibilities of evil, and, therefore, it is properly within the province of the law to prohibit, under circumstances which the law may define, and make it a crime even to utter them. In substance, that is what this law does. Congress could not call some mere words treason, because the Constitution prohibits it, but there is no constitutional limitation of the power of Congress to declare those things a crime against the law which Congress has done in this act to which I have adverted." (Exception allowed.)

9. The learned Trial Judge erred in instructing the jury (Testimony pp. 592-3), as follows:

"With respect to intent, to promote the success of our enemies. Let me distinguish here between "intent" and "Motive" in the sense

of something which moves a person to do an act. It is conceivable—indeed there has been some evidence of that actual condition here—that a person without any attitude of mind of friendliness to the enemy or of enmity to us might do something with the purpose and intent to promote the success of the enemy, and his motive for doing it might be, for illustration, a mercenary motive. He might not do it actuated by the motive that he wished to promote the success of the enemy. His real motive might be what I
850 have characterized as a mercenary one, the desire to make some money out of the act, but if his intent was to promote the success of the enemy, the motive would not excuse him, and indeed, such a motive as I have instanced would be regarded by most men ethically, at least, as an aggravation of the offense. And so with respect to any other motive which might actuate a man. It is imaginable, although it is difficult to conceive that a man would be in such a state of mind, but, nevertheless, it is imaginable that a man might be so devoted, for illustration, to the doctrine of non-resistance as that he might believe that it was his duty, and the duty of the Nation to which he belonged, to offer no resistance to any injury or any indignity however great which might be imposed upon him, and influenced by a motive of that kind, he might do an act, intending to promote the success of the enemy, by bringing about a lack of preparation on the part of ourselves.

What we are concerned with is that intent, and not the motive which sets the act in motion as distinguished from the intent." (Exception allowed.)

10. The learned Trial Judge erred in instructing the jury (Testimony, pp. 595-6), as follows:

"In determining this question, (and I say again that I have not attempted to give you a technically accurate enumeration of everything which is in this act, I refer you again to the language of the act to make it complete, if I have omitted anything), but in passing upon this question of falsity and in passing upon this question of intent and in passing upon, of course, the question of whether or not we are at war, you are permitted to use your general knowledge. I will withdraw the reference to "intent," but in
851 passing upon the question of whether we are at war, and in passing upon any other questions which are in like manner a matter of public knowledge and general information, you have the right to call upon the fund of general information which is in your keeping." (Exception allowed.)

11. The learned Trial Judge erred in instructing the jury as follows (Testimony p. 597):

"Upon the question of publication. You have the right to take that up in any order which seems proper to your mind. There was a publication. It necessarily follows that someone was concerned in that publication and the actors in it. You have been given evidence here as to the official relations of the defendants to this publication, what their duties were, what those duties involved. You know that this publication issued from a certain place and from a certain office, and by the process of elimination you have been given aid in draw-

ing an inference as to the part of each in the publication, and in addition to that you have now in the case the admissions made by the several defendants themselves in their testimony." (Exception allowed.)

12. The learned Trial Judge erred in instructing the jury (Testimony pp. 604-5-3), as follows:

"Mr. Gray: If your Honor pleases, I ask your Honor to instruct the jury with respect to the first count in the Bill of Indictment, that before they can convict any of the defendants they must find not only what you have instructed them with reference to that defendant, but that the article alleged to have been published was false as charged in the indictment, in that it differed from the original report as set forth in the indictment. In other words, that they cannot convict them unless they find the charge as laid in the indictment to be so.

The Court: Gentlemen of the jury, perhaps it might be
852 well for me to detain you just a moment upon a discussion of that thought.

Of course, it is true that in the trial of any case a man cannot be convicted of any other offense than the offense with which he is then charged, and, of course, your verdict means that he is guilty of the offense charged. That is perfectly clear. But in considering this charge I instruct you that you are permitted to go to its real meaning, its real substance and real effect. That is, that these publications were false, that they were false in the respects which have been outlined to you by counsel. "Falsity" implies the thought which I expressed to you in my general charge. It really expresses more than that, because "Falsity" may exist in telling the truth *of* the party who makes the true statement tells only half the truth. There is a great deal in the old adage that the most dangerous kind of a lie is half of the truth, or the truth half told, or a statement which is part truth and part lie. It is the substantial thing which you are to consider.

The real offense with which these defendants are charged is in putting out these false statements. They received them from a source. That source purported to be the report of a despatch, and the evidence in this case would seem to direct your minds in at least some of these instances, perhaps in many of them, to just where the report of the despatch appeared. They took that report as it came to them, and the charge is, in plain words, that they garbled it, sometimes by adding something to it and sometimes by leaving things out and sometimes by a change of the words. But the substantial thing which you are to pass upon is, was the report or statement that they put out false? Was it wilfully and knowing- false? Was it put out thus falsified with the intent to promote the success
853 of the enemies of the United States?

Mr. Gray: But, if your Honor pleases, the thought that I meant to convey I do not think your Honor has touched upon, and that is that each sub-head of the first count, and the first count in itself charges the falsity to be in the doing of a particular thing,

whether that thing was an omission or a change or an addition, and what I ask you to say to the jury is——

The Court: I think I catch your point. I do not care to discuss it, but if you have no objection to my stating your point in my own way, I will. I understand that you are raising the point that here are certain despatches, original despatches, which emanated from certain authorized sources, and that this indictment charges these defendants with a falsification of those despatches, and that that is the thing this jury must find.

Mr. Gray: That is correct, sir. That is part of it.

The Court: I decline to so charge the jury.

Mr. Gray: Will your Honor grant me an exception?

The Court: I will allow an exception to the defendants.

(Exception noted for the defendants, individually and jointly, by direction of the court.)"

13. The learned Trial Judge erred in instructing the jury (Testimony pp. 606-7), as follows:

"Mr. Gray: My point went a little farther than that. That is, that they must find falsification, if it was falsification, in the manner alleged in the indictment. In other words, that is the falsification that they are to determine, and I intended to follow that up, and I will join it here, in asking your Honor to say to the jury that in cases in which the indictment charges the omission of anything,
854 and no proof has been offered to show any omission, they have no right to consider the allegation in the indictment, which, of course, follows, ipso facto as proof of the charges themselves. I mean to say that in one or two of those newspaper articles they charge omission of things, and the indictment sets forth the things that are supposed to be omitted in the indictment, but there is no evidence of the correctness of them.

The Court: Of course, gentlemen of the jury, you are not considering the charge as proof. A charge proves nothing except the fact that a man is charged with crime, and it means nothing except that the official bodies connected with the administration of justice deemed the case to be one to be submitted to you as a petit jury, to determine the truth or falsity of the charges, and you are to do that, of course, by looking to the proofs, and as I have already said to you, and as your own common sense and sense of justice would indicate to you, I am sure, you must find those proofs in the evidence. The United States must bring home the proof of the charges as made, and they must bring it home by submitting to you evidence which carries to your minds a conviction of the truth of the charge, and carries it with the degree of certainty which is characterized by the expression "beyond a reasonable doubt."

14. The learned Trial Judge erred in instructing the jury (Testimony p. 612), as follows:

"The Court: I will allow the exception, and to make that perfectly clear to you, gentlemen, I will illustrate what I mean. If a statement were made, for illustration, (and understand, you may consider this purely as a suppos-titious case, using it wholly for the

purpose of illustration),—if an article should be published
855 to the effect that the majority of the people of the United States were out of sympathy with their Government in the prosecution of the war, I say to you that you may call upon your general knowledge to guide you to a conclusion as to whether or not that statement is false, and then you may go to the question as to whether it was wilfull, whether the false statement was wilfully and knowingly made, and whether it was made further with the intent to promote the success of the enemies of the United States. That is why I withdrew the use of the word "intent." That is why I withdraw that from my charge.

Mr. Gray: Will Your Honor give me an exception to the instructions you just gave the jury?

(Exception noted for the defendants as requested, individually and jointly, by direction of the court.)"

(Sgd.) WM. A. GRAY,
Attorney for Defendant.

856 UNITED STATES OF AMERICA, *ss:*

The President of the United States to United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C. within thirty days, pursuant to a Writ of Error filed in the Clerk's Office of the District Court of the United States, Eastern District of Pennsylvania, wherein Peter Schaefer is Plaintiff in Error and you are Defendant in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Oliver B. Dickinson, Judge of the District Court of the United States, this 18th day of December, in the year of our Lord one thousand nine hundred and eighteen.

O. B. DICKINSON,
District Judge.

857 *Affidavit of Service of Citation as to Peter Schaefer.*

(Filed December 23, 1918.)

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Gilbert W. Ludwig, being duly sworn according to law, deposes and says that on December 23, 1918, he served a copy of the Citation (as to Peter Schaefer) in the case of United States vs. Peter Schaefer

et al., No. 89 September Term, 1917, by leaving a true and correct copy of the same at the office of Francis Fisher Kane, United States Attorney, Room 330 Post Office Building, Philadelphia, Pa.

GILBERT W. LUDWIG.

Sworn to and subscribed before me this 23rd day of December, A. D., 1918.

[SEAL.]

E. G. JOHNSON,
Deputy Clerk U. S. District Court,
Eastern District of Penna.

858 UNITED STATES OF AMERICA, *ss:*

The President of the United States to United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C. within thirty days, pursuant to a Writ of Error filed in the Clerk's Office of the District Court of the United States, Eastern District of Pennsylvania, wherein Paul Vogel is Plaintiff in Error and you are Defendant in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Oliver B. Dickinson, Judge of the District Court of the United States, this 18th day of December, in the year of our Lord one thousand nine hundred and eighteen.

O. B. DICKINSON,
District Judge.

859 *Affidavit of Service of Citation as to Paul Vogel.*

(Filed December 23, 1918.)

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Gilbert W. Ludwig, being duly sworn according to law, deposes and says that on December 23, 1918, he served a copy of the Citation (as to Paul Vogel) in the case of United States vs. Peter Schaefer et al., No. 89 September Term, 1917, by leaving a true and correct copy of the same at the office of Francis Fisher Kane, United States Attorney, Room 330 Post Office Building, Philadelphia, Pa.

GILBERT W. LUDWIG.

Sworn to and subscribed before me this 23rd day of December, A. D., 1918.

[SEAL.]

E. G. JOHNSON,
Deputy Clerk U. S. District Court,
Eastern District of Penna.

860 UNITED STATES OF AMERICA, *ss:*

The President of the United States to United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C. within thirty days, pursuant to a Writ of Error filed in the Clerk's Office of the District Court of the United States, Eastern District of Pennsylvania, wherein Louis Werner is Plaintiff in Error and you are Defendant in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Oliver B. Dickinson, Judge of the District Court of the United States, this 18th day of December, in the year of our Lord one thousand nine hundred and eighteen.

O. B. DICKINSON,
District Judge.

861 *Affidavit of Service of Citation as to Louis Werner.*

(Filed December 23, 1918.)

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Gilbert W. Ludwig, being duly sworn according to law, deposes and says that on December 23, 1918, he served a copy of the Citation (as to Louis Werner) in the case of United States vs. Peter Schaefer et al., No. 89 September Term, 1917, by leaving a true and correct copy of the same at the office of Francis Fisher Kane, United States Attorney, Room 330 Post Office Building, Philadelphia, Pa.

GILBERT W. LUDWIG.

Sworn to and subscribed before me this 23rd day of December, A. D., 1918.

[SEAL.]

E. G. JOHNSON,
Deputy Clerk U. S. District Court,
Eastern District of Penna.

862 UNITED STATES OF AMERICA, *ss:*

The President of the United States to United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C. within thirty days, pursuant to a Writ of Error filed in the Clerk's Office of the District Court of the United States, Eastern District of Pennsylvania, wherein Martin Darkow is Plaintiff in Error and you are Defendant in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Oliver B. Dickinson, Judge of the District Court of the United States, this 18th day of December, in the year of our Lord one thousand nine hundred and eighteen.

O. B. DICKINSON,
District Judge.

863 *Affidavit of Service of Citation as to Martin Darkow.*

(Filed December 23, 1918.)

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Gilbert W. Ludwig, being duly sworn according to law, deposes and says that on December 23, 1918, he served a copy of the Citation (as to Martin Darkow) in the case of United States vs. Peter Schaefer et al., No. 89 September Term, 1917, by leaving a true and correct copy of the same at the office of Francis Fisher Kane, United States Attorney, Room 330 Post Office Building, Philadelphia, Pa.

GILBERT W. LUDWIG.

Sworn to and subscribed before me this 23rd day of December, A. D., 1918.

[SEAL.]

E. G. JOHNSON,
Deputy Clerk U. S. District Court,
Eastern District of Penna.

864 UNITED STATES OF AMERICA, *ss:*

The President of the United States to United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C. within thirty days, pursuant to a Writ of Error filed in the Clerk's Office of the District Court of the United

States, Eastern District of Pennsylvania, wherein Herman Lemke is Plaintiff in Error and you are Defendant in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Oliver B. Dickinson, Judge of the District Court of the United States, this 18th day of December, in the year of our Lord one thousand nine hundred and eighteen.

O. B. DICKINSON,
District Judge.

865 *Affidavit of Service of Citation as to Herman Lemke.*

(Filed December 23, 1918.)

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Gilbert W. Ludwig, being duly sworn according to law, deposes and says that on December 23, 1918, he served a copy of the Citation (as to Herman Lemke) in the case of United States vs. Peter Schaefer et al., No. 89 September Term, 1917, by leaving a true and correct copy of the same at the office of Francis Fisher Kane, United States Attorney, Room 330 Post Office Building, Philadelphia, Pa.

GILBERT W. LUDWIG.

Sworn to and subscribed before me this 23rd day of December, A. D., 1918.

[SEAL.]

E. G. JOHNSON,
Deputy Clerk U. S. District Court,
Eastern District of Penna.

866 In the District Court of the United States for the Eastern District of Pennsylvania, Sept. Sess., 1917.

No. 89.

UNITED STATES OF AMERICA
vs.
PETER SCHAEFER, PAUL VOGEL, LOUIS WERNER, MARTIN DARKOW, and HERMAN LEMKE.

Præcipe for Transcript of Record.

(Filed Dec. 28, 1918.)

In making up the Transcript of Record in the above entitled case, you should include the following:

Docket Entries,
Writs of Error,

Indictment,
Demurrers,
Opinion overruling Demurrers,
Exceptions,
Bill of Exceptions,
Opinion refusing New Trial,
Judgments,
Petitions and Orders allowing Writs of Error,
Assignments of Error on behalf of all Defendants,
Citations with affidavits of service thereof,
Clerk's Certificate,

and no others.

WM. A. GRAY,
Attorney for Defendants.

867 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

I, George Brodbeck, Clerk of the District Court of the United States for the Eastern District of Pennsylvania, do hereby certify, that the annexed and foregoing is a true and faithful copy of so much of the pleas and proceedings in the case of United States of America vs. Peter Schaefer, Paul Vogel, Louis Werner, Martin Darkow and Herman Lemke, No. 89 September Term, 1917, as per præcipe filed, a copy of which is hereto attached, the transcript of record in the above entitled case is to include, and now remaining among the records of the said court in my office.

In testimony whereof, I have hereunto subscribed by name and affixed the seal of the said District Court at Philadelphia, this 30th day of December in the year of our Lord one thousand, nine hundred and eighteen and in the one hundred and forty-third year of the Independence of the United States.

[Seal of the District Court of the United States, E. D. Penna.]

GEORGE BRODBECK, *Clerk.*

[Endorsed:] U. S. District Court, Eastern District of Penna. Certified Copy.

Endorsed on cover: File No. 26,890. E. Pennsylvania D. C. U. S. Term No. 804; Peter Schaefer, plaintiff in error, vs. The United States of America. File No. 26,891; Term No. 805; Paul Vogel, plaintiff in error, vs. The United States of America. File No. 26,892; Term No. 806; Louis Werner, plaintiff in error, vs. The United States of America. File No. 26,893; Term No. 807; Martin Darkow, plaintiff in error, vs. The United States of America. File No. 26,894; Term No. 808; Herman Lemke, plaintiff in error, vs. The United States of America. Filed January 14th, 1919. File Nos. 26,890, 26,891, 26,892, 26,893, 26,894.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

PETER SCHAEFER, PLAINTIFF IN ERROR, v. THE UNITED STATES OF AMERICA.	No. 804.
PAUL VOGEL, PLAINTIFF IN ERROR, v. THE UNITED STATES OF AMERICA.	No. 805.
LOUIS WERNER, PLAINTIFF IN ERROR, v. THE UNITED STATES OF AMERICA.	No. 806.
MARTIN DARKOW, PLAINTIFF IN ERROR, v. THE UNITED STATES OF AMERICA.	No. 807.
HERMAN LEMKE, PLAINTIFF IN ERROR, v. THE UNITED STATES OF AMERICA.	No. 808.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General and respectfully moves the Court to advance the above-entitled cases on the docket of the Court for hearing at the opening of the next term.

119743—19——1

The cases involve the validity of the conviction of plaintiffs in error, officials connected with the Philadelphia Tageblatt and the Philadelphia Sontagsblatt, newspapers printed and published in the German language in Philadelphia, of conspiracy under section 4, Title I, of the Espionage Act of June 15, 1917, 40 Stat. 217, 219, to violate the provisions of section 3 of the act. Werner and Darkow were also convicted of offenses under section 3.

Schaefer and Vogel were each sentenced to one year in the county jail at Trenton, N. J.; Lemke to two years in the Atlanta Penitentiary, and Werner and Darkow to five years each in the Atlanta Penitentiary. All of them are at large on bail.

Notice of this motion has been served upon opposing counsel.

ALEX. C. KING,
Solicitor General.

MAY, 1919.

○

26,890 26,891

THE

Supreme Court of the United States.

OCTOBER TERM, 1918.

No. 804.

Peter Schaefer, Plaintiff in Error,

vs.

The United States of America.

No. 805.

Paul Vogel, Plaintiff in Error,

vs.

The United States of America.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

I. ABSTRACT OF THE CASE.

This is a writ of error in behalf of the defendants, Peter Schaefer and Paul Vogel, who, with three others,

were convicted of conspiracy under section 4, Title I., of the Espionage Act of June 15, 1917, 40 Stat. 217, 219, to violate the provisions of section 3 of the Act, to wit, "* * * whoever, when the United States is at war, shall wilfully cause or attempt to cause insubordination, disloyalty, mutiny or refusal of duty in the military or naval forces of the United States, or shall wilfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States, shall be punished by a fine of not more than $10,000., or imprisonment for not more than twenty years, or both."

The questions involved (owing to the fact that the Supreme Court has already passed on the constitutionality of the Espionage Act and the Selective Service Act and has not changed its personnel) are primarily:—

1. Whether or not, in ruling that a peremptory challenge by one defendant should count as a challenge by all defendants, the trial Judge was in error under Article VI. of the Amendments to the United States Constitution.

2. Whether or not, under all the evidence, the defendants (Schaefer and Vogel) should have been found guilty.

The defendants were indicted jointly, with three others, on December 6, 1917. They were found guilty by a jury on September 27, 1918. The acts alleged against the defendants occurred on June 24 to September 8, 1917, and consisted in publishing and distributing copies of a daily newspaper in the German language under the name of the "Tageblatt" in Philadelphia, Pa. They were directors of the publishing company, having been elected by their respective unions to hold such position in order to safeguard the monies of said unions which were invested in said pub-

lishing company. They had nothing to do with the subject-matter of the publications. There were sixteen overt acts, divided among nine counts in the indictment. They are set forth on pages 10-47 of the Transcript of Record. Schaefer and Vogel were each sentenced to one year imprisonment, on December 18, 1918. Both of them are at large on bail.

II. SPECIFICATION OF ERRORS.

The two questions involved are raised as follows:—

1. By exceptions granted by the trial Judge to the refusal to allow challenges for each of the defendants (as to Schaefer R., 83, 84; R., 101, 102; R., 103, 104) (as to Vogel, R., 94, 95; R., 101, 102; R., 104) (as to both, R., 105, 106).

2. By testimony showing that the defendants (Schaefer and Vogel), though officers of the "Tageblatt," only acted in a representative capacity to safeguard monies of their respective unions and had no control over the editors or the editorial policy of the "Tageblatt," and were not always present at "Tageblatt" directors' meetings (R., 212; R., 335; R., 337; R., 340; R., 341; R., 344; R., 346; R., 347).

III. ARGUMENT.

1. As to a challenge by one defendant counting as a challenge for all defendants.

The sixth amendment to the Constitution of the United States reads, in part, as follows:—

> "In all criminal prosecutions, the accused shall enjoy the right to a * * * trial, by an *impartial* jury * * *."

In the case at bar the defendants jointly, were allowed ten peremptory challenges and the Government six challenges. The Government exercised its right five times (R., 72, 73; R., 85, 86; R., 86, 87; R., 91, 92; R., 92, 93). Individually, the defendants attempted to exercise their right as follows:—

Schaefer, three times (R., 83, 84; R., 101, 102; R., 103, 104).

Vogel, three times (R., 94, 95; R., 101, 102; R. 104).

The other defendants exercised their right, individually, as follows:—

Werner, three times (R., 73, 74; R., 99, 100, 101; R., 104, 105).

Darkow, four times (R., 74, 76, 77; R., 99, 100, 101; R., 103, 104; R., 104, 105).

Lemke, twice (R., 90, 91; R., 104).

The trial Judge ruled, as indicated by the above references to the Transcript of Record, that every challenge should count against all the defendants. In their order, the challenges ran as follows:—

First, by Werner (R., 73, 74).

Second, by Darkow (R., 74, 76, 77).

Third, by *Schaefer* (R., 83, 84).

Fourth, by Lemke (R., 90, 91).

Fifth, by *Vogel* (R., 94, 95).

Sixth, by Werner and Darkow (R., 99, 100, 101).

Seventh, by *Schaefer and Vogel* (R., 101, 102).

Eighth, by *Schaefer* and Darkow (R., 103, 104).

Ninth, by *Vogel* and Lemke (R., 104).

Tenth, by Werner and Darkow (R., 104, 105).

All the defendants, then, jointly, attempted to exercise their right once, but the trial Judge refused such a challenge on the ground that the challenges had been exhausted (R., 105, 106).

In other words, each of the defendants (Schaefer and Vogel) claimed a right to ten challenges and therefore a right to seven more challenges than those already exercised. They further claim that, as regard to them, they

were not tried by an *impartial* jury, because both of them together only had a chance to challenge five times. Finally, they claim that the twelfth man selected for the jury was not *impartial* as to them; but they were prevented from challenging him, because the other defendants had used up all the challenges permitted by the trial Judge.

Funk & Wagnalls' New Standard Dictionary defines impartial on page 1232:—

> "1. Not disposed to prefer or favor one above another; unbiased; unprejudiced; just, fair; as, an *impartial* judge."

By the Act of March 3, 1911, C. 231, Sec. 287, after stating the number of challenges, it provides:—

> "And in all cases where there are several defendants * * * the parties * * * shall be deemed a single party for the purposes of all challenges * * *."

In U. S. *vs.* Marchant, 12 Wheat. 480, 481.

Mr. Justice Story said, "Upon a joint trial, each prisoner may challenge his full number, and every juror challenged as to one, is withdrawn from the panel as to all the prisoners on the trial, and thus in effect, the prisoners in such case possess the power of peremptory challenge to the aggregate numbers to which they are respectively entitled. This is the rule clearly laid down by Lord Coke, Lord Hale and Sergeant Hawkins, and indeed, by all the elementary writers." This decision was rendered under the Act of 1790 which did not contain a provision as set forth in the Act of 1911 as above noted.

In U. S. *vs.* Hall, 44 Fed. 883 (1890), under the Act of 1840, which contained a provision similar to the one above noted, it is true it was held that such a provision (1) did not deny the defendants an impartial jury (Article VI, Amendment to Constitution) and (2) was not unconstitutional. But this case was not fully argued, and was not decided by the Supreme Court.

There is a practical side to this question which is bound to work hardship to individual defendants under certain circumstances. If such is the case, the Act cannot remain law, since it would sometimes work hardship and sometimes not work hardship. The result would not be *impartial* to the defendants in many cases.

Such a case would arise where the number of defendants was odd and the number of challenges allowed was even. Suppose, as in this case, ten challenges were allowed to the defendants, and there were three defendants, and suppose that each defendant was antagonistic to both of the others and each defendant had separate counsel. Manifestly, if one defendant used four challenges and each of the others used three challenges, all of the challenges would be used up, and no more would be allowed, even if the second and third defendants wanted to make an additional challenge. This would be giving more rights to one defendant than to the others, and would, in effect, be an "unequal administration of the law," which is just as much forbidden under our decisions as the enforcement of a law which is unequal in its terms. Certainly, such is the law under the Fourteenth Amendment with respect to the States.

Indeed, this same condition of affairs could arise where there was an even number of challenges allowed, say ten, and there was an even number of defendants, say four. In such a case, it might happen that the defendants would, through force of circumstances, have one, two, three and four challenges each, respectively, though every one of those having less than four challenges might wish to exercise more challenges.

It is only where the number of defendants divided into the number of challenges gives an equal quotient AND *where the Court*, by rule or otherwise, *divides up the challenges equally*, that the law could be made to apply equally.

This matter, presumably, has not come before the Supreme Court, but it is now the law as borne out by practice.

2. As to whether or not, under all the evidence, the defendants (Schaefer and Vogel) should have been found guilty.

The defendant Schaefer was a director and president of the Tageblatt Publishing Association, a corporation, which published a daily newspaper in the German language, and which contained the articles which made up the overt acts alleged in the indictment.

The defendant Vogel was a director and treasurer of the same corporation.

The other defendants were either editors or the business manager of the newspaper.

From the uncontradicted testimony (direct and cross) of both Schaefer and Vogel, their respective unions (Beer Drivers and Brewers) bought eighteen shares of stock in 1911 to get control of the publishing company and elected eighteen of their members to attend the meetings of the stockholders so as to elect brewery workers as directors. It seems the brewery workers were financially interested in the publishing company. In 1914, they took a mortgage on the building owned by the company (R. 340, 341).

Vogel had nothing to do with the publishing of the newspaper and nothing to say as to what went into its columns. He only attended to money matters—receiving money from and paying money to the business manager. He visited the company's office once a month. He read the paper to keep informed about union meetings (R. 340, 341, 344). He was the financial watch dog for the Brewery Workers' Unions.

Schaefer attended meetings when he was in Philadelphia—five or six times in two years. He, likewise, had nothing to do with what was published in the paper. He even could not stop the publication of articles attacking him which appeared in the paper. When he became a director he understood he had no editorial authority (R. 346, 347). He was a mere figure-head, useful only to attend meetings when the investments of the Brewery Workers were in danger.

The only active connection of either Vogel or Schaefer, aside from holding office in the publishing company, was that shown by Government Exhibit No. 89, which was admitted over objection and an exception granted (R. 212). *The offer was made in connection with the defendant Lemke only* (R. 212). It was a memorandum book kept by Lemke in his desk at the plant of the publishing company in Lemke's handwriting. It merely showed that both Vogel and Schaefer were present (at least part of the time) at a meeting of the directors of the company on April 23, 1917 (R. 335). It did not show that they were present at a meeting on June 25, 1917 (R. 337).

That is all the evidence against these uneducated brewery workers, who blindly followed the orders of their unions and did not even own one share of stock in their own right. Granting that the editors of the Tageblatt were the criminals they were painted, what chance did these brewery workers have in matching their wits against those who were at their work day in and day out? The most that could be said against Schaefer and Vogel was that they knew or ought to have known what was going on.

It is true, of course, "If the case should have gone to the jury, the jury were the sole judges of the facts put before them;" and no one could say that they had decided wrongly. The question, however, is, "Should the case have gone to the jury?"

> "Proof of mere suspicion, or bare knowledge, that the act is being done by others, without such intentional participancy in or connection with it, is not sufficient. * * * mere knowledge, without more * * * would not make the person a party to the acts."
>
> U. S. *vs.* Newton, 52 Fed. 275.

Granting the connection of Vogel and Schaefer with the publication, are they responsible for the acts of the editors, when they are not shown affirmatively to have wilfully and knowingly participated in any wrongful act? There is a Pennsylvania case along this line where a conspiracy prose-

cution was based upon the collective wrongful acts of a school board and all the members were convicted. The Superior Court set aside the verdict, holding that where certain members were guilty as proved, others merely because of membership on the board could not also be convicted, but "it must be shown affirmatively that such members participated with the others in the criminal confederation."

Comm. *vs.* Tilly, 33 Super. 35.

> "It is not sufficient to connect any officer or agent of the company with the conspiracy that they knew of it or acquiesced in it. They must by word or deed have become a party to it."
>
> Patterson *vs.* U. S., *222* Fed. 631.

Does not the case of Marrash *vs.* U. S., 168 Fed. 225, apply, where the Court said:—

> "We are unable to find sufficient evidence against Habib Marrash. There are some suspicious circumstances and facts which seem to indicate that he had knowledge of the illegal nature of the transactions, but there is nothing which rises to the dignity of proof *required in criminal cases.* Knowledge by an alleged co-conspirator that the other defendants were attempting to defraud is not enough. Mere suspicion that he was a party to the conspiracy is not enough."

In the light of a charge of conspiracy, ought not the language used in McClarty *vs.* U. S., 191 Fed. 518, to be applied:—

> "Imputation to one person of the acts of another cannot in criminal cases find adequate basis in mere moral or argumentative considerations. Criminally a man can only be held responsible for what he does or actually procures to be done."

and again:—

> "A mere failure on the part of the conspirator to prevent another from doing the act of his own volition cannot be sufficient (to establish a conspiracy on his part) unless we disregard clearly established canons of statutory interpretation."

It is evident that the trial Judge did not think the defendants Schaefer and Vogel were as guilty as the three other defendants, judging by his language in his opinion sur motions in arrest of judgment and for a new trial (R. 423).

The district attorney only asked for their conviction on the conspiracy count.

The trial judge sentenced each of them to *one* year's imprisonment (R. 425). He sentenced Lemke to two years and Werner and Darkow to five years each (R. 426, 427).

HENRY JOHN NELSON,
Attorney for Plaintiffs in Error (Schaefer and Vogel).

FILED
SEP 22 1919
JAMES D. MAHER,
CLERK.

BRIEF OF PLAINTIFFS IN ERROR

IN THE

Supreme Court of the United States

October Term, 1918

No. [redacted]270

PETER SCHAEFFER, Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA.

No. [redacted]271

PAUL VOGEL, Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA.

No. [redacted]272

LOUIS WERNER, Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA.

No. [redacted]273

MARTIN DARKOW, Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA.

No. [redacted]274

HERMAN DEMKE, Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA.

In Error to the District Court of the United States for the Eastern District of Pennsylvania.

WILLIAM A. GRAY,
Attorney for Plaintiffs in Error.

I. F. Huntsinger Co., Appellate Printers, Camden, N. J.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1918.

No. 804.

PETER SCHAEFER, *Plaintiff in Error,*

vs.

THE UNITED STATES OF AMERICA.

No. 805.

PAUL VOGEL, *Plaintiff in Error,*

vs.

THE UNITED STATES OF AMERICA.

No. 806.

LOUIS WERNER, *Plaintiff in Error,*

vs.

THE UNITED STATES OF AMERICA.

No. 807.

MARTIN DARKOW, *Plaintiff in Error,*

vs.

THE UNITED STATES OF AMERICA.

No. 808.

HERMAN DEMKE, *Plaintiff in Error,*

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

I. STATEMENT OF THE CASE.

At the September sessions, 1917, the Grand Jury, sitting for the Eastern District of Pennsylvania, returned true bills of indictment against Louis Werner and Martin Darkow, two of the appellants, charging them with treason and true bills of indictment against all of the appellants, charging them with making and conveying false reports to promote the success of the enemies of the United States, to wit, the Imperial German Government; wilfully obstructing recruiting and enlistment service of the United States and conspiracy to (a) wilfully make and convey false reports, etc., (b) wilfully cause and attempt to cause insubordination, etc., in the military and naval forces of the United States and (c) wilfully obstruct the recruiting and enlistment service of the United States. Each of the indictments charged the performance of the same acts.

The appellants, Louis Werner and Martin Darkow, were tried upon the bill of indictment charging them with treason and were acquitted by the instruction of the Court.

All of the appellants were tried together upon the other bill of indictment, with the following result:

Peter Schaeffer was acquitted upon counts 1 to 8, inclusive, and convicted upon count 9, which charged conspiracy.

Paul Vogel was acquitted upon counts 1 to 8, inclusive, and convicted upon count 9, which charged conspiracy.

Louis Werner was convicted upon counts 1, 2, 4 and 9 and acquitted upon counts 3, 5, 6, 7 and 8.

Martin Darkow was convicted upon counts 1, 3, 5, 6 and 9 and was acquitted upon counts 2, 4, 7 and 8.

Herman Lemke was acquitted upon counts 1 to 8, inclusive, and convicted upon count 9, which charged conspiracy.

Peter Schaeffer and Paul Vogel were each sentenced to serve a term of one year's imprisonment in the Mercer County Jail at Trenton, New Jersey; Louis Werner and Martin Darkow were each sentenced to serve a term of imprisonment of five years in the United States Penitentiary at Atlanta, Georgia, and Herman Lemke was sentenced to serve a term of imprisonment of two years in the United States Penitentiary at Atlanta, Georgia.

The matter now comes before this Court upon a writ of error.

All of the appellants were connected with a newspaper published in the German language in the City of Philadelphia, the daily edition of which was called The Philadelphia Tageblatt and the Sunday edition the Philadelphia Sontagsblatt. The paper was published by a corporation of which Peter Schaeffer was president and Paul Vogel treasurer. Though the evidence established the fact that neither of these men had anything to do with the publication of the newspaper itself and only on rare occasions exercised their official office in connection with the business management of the paper. They were each connected with labor organizations who held a controlling interest in the corporation that owned the paper and served on the board of directors and were elected to their respective offices in order that they might protect the business interests of the organization which they represented.

Louis Werner was the chief editor of the newspaper, having control of the editorial columns, while Martin Darkow was the managing editor, responsible for its news columns. Herman Lemke was the

business manager of the newspaper in control of its financial affairs.

Taking up the indictment, we need not be concerned with counts 7 and 8, all of the appellants having been acquitted upon these counts. All of the appellants were convicted upon counts 9, which charged conspiracy, but only Louis Werner and Martin Darkow were convicted upon any of the other counts and the jury seems by its verdict to have held Werner responsible for the editorial articles and Darkow responsible for the articles which were printed as news.

Count one of the indictment, upon which Werner and Darkow were both convicted, charged that the appellants "did knowingly, wilfully and unlawfully make and convey false reports and statements with intent to promote the success of the enemies of the United States, to wit, the said Imperial German Government." This count contained thirteen subheads, quoting what purported to be news items published by the appellants and charging each of these news items to be false in certain particulars. Some were charged to be false in that important statements in the original dispatches had been omitted; others were charged to be false because they differed in the translation of a single word in translating the original dispatch; and others were charged to be false because the caption of the article differed from the caption above the original dispatch.

Count two of the bill of indictment, upon which Louis Werner alone was connected, charged the defendants "did knowingly, wilfully and unlawfully obstruct the recruiting and enlistment service of the United States" in the printing of an editorial on the Fourth of July.

Count three of the bill of indictment, upon which both Louis Werner and Martin Darkow were convicted, charged the same offense as count two in the publication of a certain newspaper article.

Count four, upon which Louis Werner alone was convicted, charged the same offense in the publication of an editorial entitled "The Failure of Recruiting."

Counts five and six, upon which Martin Darkow alone was convicted, charged that the appellants "did knowingly, wilfully and unlawfully make and convey a false report and statement with intent to promote the success of the enemies of the United States, to wit, the Imperial German Government" in the publication of two news dispatches, in one of which it was alleged matter had been added and in the other of which it was alleged a word had been changed in the making of the translation from the English to the German language.

As has been heretofore stated, all of the appellants were acquitted upon counts 7 and 8 and convicted upon counts 9, which charged conspiracy.

Though more a matter of argument than a part of the history of the case, this seems the proper place to call attention to the fact that the time during which and the circumstances under which the case was tried were exceedingly likely to bring about a verdict of guilty against one who was charged with violating the Espionage Law in the publication of a German newspaper. This is aptly illustrated by an examination of counts five and six, upon which Martin Darkow was convicted.

Count 5 charged the falsification to consist of the addition of a paragraph to the original dispatch. An examination of the indictment (Record, p. 40) shows this addition to be a comment and not a part of the original dispatch and the Government's exhibit

offered in proof of this publication confirms the fact that it was not a part of the original dispatch. Yet the jury convicted the defendant, Martin Darkow, of a falsification.

Count 6 charged the falsification of the speech of Senator La Follette in the Senate and, though the speech was a lengthy one, the only charge against the defendants was that they translated the English word "breadlines" into the German word "brotriots," meaning "bread riots," instead of into the German word "brotriehen," meaning "bread lines." For this failure to agree in the proper translation of the word, the defendant, Martin Darkow, was convicted of publishing a false report and statement with intent to promote the success of the enemies of the United States, the Imperial German Government.

Upon the trial of the case a severance was asked for and refused. One of the reasons advanced for the severance, among other reasons, was that it was the practice in the United States Courts to permit the defendants who were tried jointly to exercise only the same number of challenges as would be granted to a defendant who was tried alone.

While the jury was being empanelled, peremptory challenges were exercised on behalf of certain individual defendants. When the number of challenges allowed by law in the case of an individual defendant had been exhausted and the juror, George Kimball, was called, a challenge was made on behalf of all of appellants (Record, pp. 105 and 106). This challenge was made upon the theory that the Act of Congress which provides that in joint trials the number of challenges should be limited to that which is allowed by law to a single defendant was unconstitutional, as it took from each of the defendants the equal rights guaranteed to him by the Constitution and

deprived him of the fair and impartial trial also guaranteed to him thereby. The Court refused to allow the challenge and granted an exception to each of the defendants.

During the course of the trial and in connection with the exceptions taken to the learned trial Judge's charge and the exceptions taken to the refusal of the learned trial Judge to instruct the jury to render a verdict of "not guilty" as to all of the defendants, the point was made that no proof had been offered by the United States Government to sustain the charge as laid in the indictment. In other words, the indictment in connection with the counts which charged the publication of false statements charged those statements to be false in that they differed from the original dispatches in certain particulars, while no evidence whatsoever was offered to show what the original dispatches contained.

II. SPECIFICATIONS OF ERROR.

By the filing of a demurrer to the indictment and its various counts and by the request made of the learned trial Judge to instruct the jury to render a verdict of not guilty as to all of the defendants as to all of the counts intended to raise the question of the constitutionality of sections 3 and 4 of chapter 1 of the Act of June 15, 1917, known as the Espionage Act. Since the writ of error in this case was allowed, the Act has been held to be constitutional and this point will therefore not be argued.

The points which will be argued are as follows:

(1) That the Act of March 3, 1911, chapter 231, section 287, is unconstitutional in that part which provides that where there are several defendants or several plaintiffs, the parties on each side shall be deemed a singe party for the purpose of all challenges under this section.

(2) That the Government failed to prove the charge of making false statements as the charge was laid in the indictment and that, therefore, the learned trial Judge erred in refusing to instruct the jury to render a verdict of not guilty upon the counts which charged this offense.

(3) That the learned trial Judge erred in instructing the jury that in passing upon the question of the falsity of the dispatches as published by the appellants and in passing upon any other questions which are a matter of public knowledge and general information, they had the right to call upon the fund of general keeping which is in their keeping.

(4) That the learned trial Judge erred in refusing to instruct the jury to render a verdict of not guilty upon all of the counts of the bill of indictment in the case of each of the appellants.

III. BRIEF OF ARGUMENT.

1. Constitutionality of Act of March 3, 1911, Chapter 231, Section 287, Providing that in all Cases Where There Are Several Defendants the Parties Shall be Deemed a Single Party for the Purpose of all Challenges.

The number of challenges to which the defendants in this case were entitled under the Act of March 3, 1911 (*supra*) was ten. When the juror, George Kimball, was called, none of the defendants had exercised individually ten peremptory challenges, but the number of challenges exercised on behalf of all of the defendants was ten. All of the defendants attempted to exercise their right of peremptory challenge in connection with this juror and the Court ruled (Record, pp. 105 and 106) that under the provisions of the Act of Congress all of the defendants should be deemed a single party and refused to allow the challenge, granting to each of the defendants an exception.

If that portion of the Act of March 3, 1911, chapter 231, section 287, which provides that when more than one defendant is upon trial, the defendant shall be deemed a single party for the purpose of determining the number of challenges is constitutional, then the Court is correct in its ruling. But, if it is not constitutional, then the defendants were deprived of their right to exercise peremptory challenges to the number allowed them by law and the ruling of the Court constitutes reversible error.

The Government of the United States is based upon the principle of equality among its citizens and any law which is repugnant to this principle and any

law which puts upon the defendants charged with the commission of crime a greater burden than is put upon another charged with the same crime and under like circumstances, or grants to a defendant charged with the commission of a criminal offense greater privileges in the trial of his case than are afforded to another defendant charged with a similar or the same offense under like circumstances is in violation of the spirit of the Constitution, if not in violation of the exact letter of any of its articles or amendments.

And such a law, it is respectfully submitted, is in violation of that portion of article 5 of the Amendments to the Constitution of the United States which provides that no person shall be deprived of life, liberty or property without due process of law, and, if it relates to the subject of trial by jury, is in further violation of that portion of article 5 of the United States Constitution which provides that the accused in all criminal prosecutions shall have a right to a speedy and public trial by an impartial jury.

It is not to be doubted that under the common law and in the United States prior to the passage of the Act of 1840, which contains a similar provision to that of the Act of March 3, 1911, chapter 231, section 287, any defendant who was jointly tried with another defendant for the commission of a criminal offense was entitled to the same number of challenges as he would have been entitled to had be been tried separately.

United States vs. Marchant and Colson 12 Wheaton 480.

And the question of whether the Act of 1840 or the Act of March 3, 1911, can lawfully deprive such a defendant of his right to exercise the same number of challenges when tried with a joint defendant as he would have enjoyed when tried alone has never been decided by the Supreme Court.

Similar statutes to the Act of March 3, 1911, have been adopted in various states of the Union and in a number of instances the Appellate Courts of the states have been called upon to construe these statutes, but in the decisions construing them the question has always been the meaning of the word "party" or "respondent" as used in the Act: that is to say, whether it was properly construed as meaning all of the defendants indicted in a criminal case, and in none of the states, until lately, has the question of the constitutionality of such an act been raised. The authorities construing the various acts are, therefore, of no help to us in determining the question in the present case.

In the case of *Commonwealth vs. Isaac Deutsch, et al,* lately argued and decided in the Superior Court of Pennsylvania, the opinion of which has not yet been reported, the Court held section 40 of the Act of March 31, 1860, of the State of Pennsylvania, which contains a similar provision to the Act of March 3, 1911, to be constitutional. The reasoning of the Court, however, in that case is not conclusive. The Constitution provides that a man is not to be deprived of his life, liberty or property without due process of law. Article 5 further provides that no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the military service when in actual service, in time of war or public dan-

ger; nor shall any person be subject for the same offense, to be twice put in jeopardy of life or limb, nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property without due process of law. And thus the infamous crime which is charged in the indictment in this case entitles the defendants to a trial by jury, which is the only due process of law by which he may be deprived of his liberty. Can it be said to be due process of law to permit a defendant who is fortunate enough to have been indicted alone, or who so far comes within the grace of a trial Court to be granted a severance to have ten peremptory challenges and to deny to another defendant who is indicted as one of five an equal number of challenges because it may happen that the challenges which were exercised by his co-defendants exhaust the ten which are allowed to a defendant in such cases. And yet this is what happens if that part of the Act of March 3, 1911, which provides that defendants which are jointly indicted shall be treated as a single party. It would seem that to try a man under such circumstances and to deprive him of the right of peremptory challenge to which another defendant who was indicted alone or granted a severance would be entitled is depriving him of his liberty without due process of law. A law which is arbitrary and unequal would seem to come within the provision of this section of the Constitution.

And such an act as the one in question would seem to be in violation of article 6 of the Amendments to the Constitution of the United States, which provides for the right of a trial by an impartial jury. This amendment is certainly intended to guarantee to every defendant who is tried for a criminal offense the right to the same kind of impartial jury and when

one defendant is entitled to exercise a certain number of challenges and another defendant, because he happens to be indicted with others, is deprived of the same number of challenges, then he is not granted the same right of trial by an impartial jury and the equal administration of the law upon which the principles of all governments are founded is violated.

It is admitted that a defendant upon trial charged with a criminal offense is not entitled to have certain persons as jurors to try the question of his guilt or innocence and that his right to challenge peremptorily is a right to reject and not a right to accept and that, though he cannot be heard to complain because he is deprived of the services, for any one of many reasons, of any particular individual as a juror, he has the right to complain if his right to reject that juror is taken away from him. And it will be admitted that it is not a denial of the equal protection of the law where all of the citizens of a certain State are given the same right and subject to the same penalties under like circumstances, but when a law in effect denies to certain persons in the same class rights which are given to others of the class, then it becomes repugnant to the spirit of the Constitution.

It may be argued that the defendants in this case were tried in the same manner under the law as all of the defendants who were jointly indicted, but the answer to that is that that is not a proper classification. The classification that should be recognized as one of equality is the classification of defendants who are charged with crimes or a certain grade of crimes, whether indicted individually or jointly.

It is therefore respectfully submitted that the Act of March 3, 1911, chapter 231, section 287, which deprives a defendant indicted jointly of the same number of challenges which he would have if tried individually is unconstitutional.

2. Sufficiency of Proof and Charge of Court as to Falsity of Statements.

The first count of the bill of indictment charged that the defendants "did knowingly, wilfully and unlawfully make and convey false reports and statements with intent, etc." As has been heretofore mentioned, the defendants were the publishers of a German language newspaper in the City of Philadelphia. They had no Associated Press news and secured practically all of their news items by copying from other English and German newspapers. This was established as a matter of evidence in the trial of the case. In further copying news articles taken from other newspapers, they did, in some instances, use different captions from that used by the paper in which the article was copied, and, again, for lack of room or other reason, would omit certain portions of the dispatch which was copied and, in one instance, added a comment of a few lines referring to the subject matter of the dispatch. The falsity, as it has been called, which was proven against the defendants was that the articles which were published differed from the articles in the papers from which they were copied.

In some instances no proof at all was offered as to what was contained in the dispatch as the same was published by the paper from which the defendants took it and in no instance was any evidence offered as to what was contained in the original dispatch of which the publication purported to be a copy. It is therefore inconceivable to counsel for the appellants that a jury should be permitted to determine that the defendants knowingly, wilfully and unlawfully con-

veyed a false report and statement when no proof whatsoever as to the falsity was offered.

Take the first subhead under count one of the Bill of Indictment, which refers to an article published under the heading "The Crisis." The indictment, after quoting the article as published by the defendants, says: "which said report was false, as the defendants then and there well knew, in that, that an important statement in the original dispatch which the report purported to reproduce was omitted, to wit, a proposal by Maxim Gorky that Russia wage a separate war against Germany." The charge as laid in the indictment was that the report was false because of an omission of an important statement in the original dispatch. There was no evidence of the original dispatch as to what it contained and no evidence offered of any other article from any other paper to show that even it contained the statement alleged to have been omitted in the publication by the defendants.

What has been said with reference to the first subhead of count one is also true as to the second, third, fourth, fifth, sixth and seventh subheads of the first count.

The eighth subhead (h) of the first count charges the falsification of a dispatch from Washington, reporting a speech of Senator La Follette in the Senate. The evidence established the fact that this dispatch was clipped from another German newspaper; that the article as set forth in the other paper translated the English word "breadline" as "brotreihen," while in the publication by the defendants the word was translated "brotriots."

In the ninth subhead (i) of the first count the falsity is charged in the incorporating in the report a sentence not contained in the original report. In

this, as in other cases, no evidence of the original report was offered, but a clipping from another German newspaper was offered. An examination of the indictment itself and the clipping which was offered in support thereof shows that the thing which was added was not added as part of the clipping as taken from another newspaper, but added as the comment of the editor and not as a part of the original dispatch.

In the next subhead (j) of the first count complaint is made as to the use of a different headline from the headline used by another paper and in the next subhead (k) complaint is made of omission of a sentence, though no proof was offered of either the original dispatch or of any other paper from which the dispatch was copied.

The next subhead (l) charges the use of a different headline and the next subhead (m) charges the omission of a sentence alleged to be in the original dispatch, though no proof thereof was offered.

No decisions need be cited in support of the proposition that a charge must be proven as laid in the indictment, and, in this case, when the charge was that the publications conveyed false statements because they either omitted something that was contained in the original dispatch or added something thereto, or used a different headline, it was incumbent upon the Government to prove the original dispatch. No attempt was made to do this and only in one or two instances, where the original clippings taken from another newspaper were found among the defendants' effects, did the Government offer any proof as to the nature of the article from which the defendants copied their news. The Court may then well ask why was the case permitted to go to the jury. It was permitted to go to the jury upon the

theory that it was just as much the conveying of false statements to alter a clipping taken from another newspaper as it was to alter the original dispatch and upon the further theory of the law that the jurors might be permitted to draw upon their common knowledge and information to determine whether any false information was conveyed by the dispatches as published. It is impossible for the appellants to say how, as between the articles published in other newspapers and the articles published by the defendants, the jury could determine which was true and which was false, even if they had the other articles before them for the purpose of seeing whether there had been any alteration.

But it must be borne in mind that only in one or two instances did they have the articles before them. It is difficult to see what possible knowledge or general fund of information the jurymen could have which would lead them to conclusions that the publications for which the defendants were responsible conveyed false statements.

Take, for instance, the very first article in the first count, the article headed "The Crisis." This is charged as being false, because the original dispatches alleged to have contained a proposal by Maxim Gorky that Russia wage a separate war against Germany. The original dispatch was not produced in this case, nor any evidence as to any other dispatch from which the article was taken. If it was an original dispatch which contained such a proposal by Maxim Gorky, it was susceptible of proof and certainly not a matter of general information of which either the Court could take judicial notice or the jury find as a matter of fact. And, indeed, supposing that it was proved in this case that the original dispatch contained such a proposal and that the

defendants copied the original dispatch and left out deliberately that part of the original dispatch, what is there in such a publication that can be said to convey a false report with the intent to promote the success of the enemies of the United States?

Everything that has been argued with reference to the article headed "The Crisis" applies to the next article headed "Confirmed," the next article headed "Ups and Downs," the next article headed "Serbia," the next article headed "Ad Interim" and the next article headed "Nothing Certain."

The next article is the one headed "War of the Rich," which is the report upon Senator La Follette's speech hereinbefore referred to. In this case the clipping of another German newspaper from which the article was taken was offered in evidence, but there was no evidence as to the original report and no evidence as to the original speech. Martin Darkow, one of the defendants who was responsible for the insertion of the article in the newspaper and who it might be stated is a very learned man and a linguist of some ability, explained that he knew of no German word into which the expression breadlines could properly be translated and, as it was translated in the article from which the clipping was taken, to wit, the word "brotreihen" it would convey the impression of lines of bread or rows of bread, which was evidently not the intention of the speaker and he therefore translated the word into the word "brotriots," which he conceived to be the only proper word in the German language to express the meaning intended to be conveyed by the use of the word "breadlines" in the speech.

In the next article headed "Further Economies," there was no proof of the original dispatch, but there was proof of the clipping from which the article was

taken. But an examination of the original clipping and of the article as published by the defendants and as set forth in the indictment shows that the comment which was added to it was not added as part of the original report, nor as part of the report as copied from another paper, but as an editorial comment. The whole article and the comment thereon is as follows:

> "Amsterdam, September 2.—It has been reported here that permission to export the wheat and flour on the ships held in New York has been refused. Information to this effect is contained in an official proclamation of the latest cut in bread rations and of the need for economy which has reached the civil authorities. This document says: 'We know now with certainty that we cannot count upon the import of breadstuffs from America and that we must strive to make our own provisions suffice.'—In initiated circles it is said that under no conditions can the new American proposal be accepted and that the foodstuffs may rot before the ships will be unloaded."

The next subhead of the first count charges the defendants with changing a headline which the indictment charges was originally "Sarrail's Troops in Great Attack" and the headline used by the defendants was "Sarrail's Troops Beaten." The headline is certainly not part of an original dispatch; no evidence was offered as to the original dispatch or the article from which it was copied, and yet the jury was allowed to infer that the heading on the alleged dispatch was changed, and, if the dispatch itself is read, justification is found for the headline because the dispatch gives an account of the defeat of Sarrail's troops.

The next article referred to is headed "For Political Reforms" and the falsity is charged to exist in the omission of a part of a sentence. All of the argument that has been advanced as to the first seven subheads of this is applicable here.

In the next subhead of the first count (1) the charge is the change of a heading and in the last subhead of this count the charge is the omission of a sentence.

The learned trial Judge was requested to charge the jury that there could be no conviction under this count of the indictment.

Those portions of his charge upon the question of proof required to sustain this count were excepted to and have been assigned as error. Upon the question of falsity the Court charged the jury as follows (Record, p. 407):

> "In determining this question (and I say again that I have not attempted to give you a technically accurate enumeration of everything which is in this act, I refer you again to the language of the act to make it complete, if I have omitted anything), but in passing upon this question of falsity and in passing upon this question of intent and in passing upon, of course the question of whether or not we are at war, you are permitted to use your general knowledge. I will withdraw the reference to "intent", but in passing upon the question of whether we are at war, and in passing upon any other questions which are in like manner a matter of public knowledge and general information, you have the right to call upon the fund of general information which is in your keeping.
>
> (Exception allowed.)"

(Also Record pp. 410-11-12):

"Mr. Gray: If your Honor pleases, I ask your Honor to instruct the jury with respect to the first count in the Bill of Indictment, that before they can convict any of the defendants they must find not only what you have instructed them with reference to that defendant, but that the article alleged to have been published was false as charged in the indictment, in that it differed from the original report as set forth in the indictment. In other words, that they cannot convict them unless they find the charge as laid in the indictment to be so.

The Court: Gentlemen of the jury, perhaps it might be well for me to detain you just a moment upon a discussion of that thought.

Of course, it is true that in the trial of any case a man cannot be convicted of any other offense than the offense with which he is then charged, and, of course, your verdict means that he is guilty of the offense charged. That is perfectly clear. But in considering this charge I instruct you that you are permitted to go to its real meaning, its real substance and real effect. That is, that these publications were false, that they were false in the respects which have been outlined to you by counsel. "Falsity" implies the thought which I expressed to you in my general charge. It really expresses more than that, because "falsity" may exist in telling the truth if the party who makes the true statement tells only half the truth. There is a great deal in the old adage that the most dangerous kind of a lie is half of the truth, or the truth half told, or a statement which is part truth and part lie. It is the substantial thing which you are to consider.

The real offense with which these defendants are charged is in putting out these false statements. They received them from a source. That source purported to be the report of a dispatch, and the evidence in this case would seem to direct your minds in at least some of these instances, perhaps in many of them, to just where the report of the dispatch appeared. They took that report as it came to them, and the charge is, in plain words, that they garbled it, sometimes by adding something to it and sometimes by leaving things out and sometimes by a change of the words. But the substantial thing which you are to pass upon is, was the report or statement that they put out false? Was it wilfully and knowingly false? Was it put out thus falsified with the intent to promote the success of the enemies of the United States?

Mr. Gray: But, if your Honor pleases, the thought that I meant to convey I do not think your Honor has touched upon, and that is that each subhead of the first count, and the first count in itself charges the falsity to be in the doing of a particular thing, whether that thing was an omission or a change or an addition, and what I ask you to say to the jury is——

The Court: I think I catch your point. I do not care to discuss it, but if you have no objection to my stating your point in my own way, I will. I understand that you are raising the point that here are certain dispatches, original dispatches, which emanated from certain authorized sources, and that this indictment charges these defendants with a falsification of those despatches, and that that is the thing this jury must find.

Mr. Gray: That is correct, sir. That is part of it.

The Court: I decline to so charge the jury.

Mr. Gray: Will your Honor grant me an exception?

The Court: I will allow an exception to the defendants.

(Exception noted for the defendants, individually and jointly, by direction of the Court.)

Mr. Gray: My point went a little farther than that. That is, that they must find falsification, if it was falsification, in the manner alleged in the indictment. In other words, that is the falsification that they are to determine, and I intended to follow that up, and I will join it here, in asking your Honor to say to the jury that in cases in which the indictment charges the omission of anything, and no proof has been offered to show any omission, they have no right to consider the allegation in the indictment, which of course, follows, ipso facto as proof of the charges themselves. I mean to say that in one or two of those newspaper articles they charge omission of things, and the indictment set forth the things that are supposed to be omitted in the indictment, but there is no evidence of the correctness of them.

The Court: Of course, gentlemen of the jury, you are not considering the charge of proof. A charge proves nothing except the fact that a man is charged with crime, and it means nothing except that the official bodies connected with the administration of justice deemed the case to be one to be submitted to you as a petit jury, to determine the truth or falsity of the charges, and you are to do that, of course, by looking to the proofs, and as I have already said to you, and as your own common sense and sense of justice would indicate to you, I am sure, you must find those proofs in the evidence. The United States must bring home the proof of the charges as made, and they must bring it home by submitting to you

evidence which carries to your minds a conviction of the truth of the charge, and carries with it the degree of certainty which is characterized by the expression 'beyond a reasonable doubt.' "

All that has been said with reference to the first count of the bill of indictment is equally applicable to the fifth and sixth counts of the bill of indictment. Indeed, these counts refer to the two articles entitled "Further Economies" and "War of the Rich", the publication of which are also made the subject of the first count of the bill of indictment.

This argument is also applicable to the ninth count of the bill of indictment which charges, among other things, a conspiracy to publish these false statements.

3. Charge of Court as to General Information and Knowledge of Jury.

The learned trial Judge instructed the jury (Record p. 407):

> "In passing upon the question of the falsity of these publications, in passing upon the question of whether we are at war, and in passing upon any other questions which are in like manner a matter of public knowledge and of general information, you have the right to call upon the fund of general information which is in your keeping."

It is conceded that there might be many things of which the Court might take judicial notice, and there are certain things which need not be proven as matters of fact in the trial of a case and with reference to which a jury might apply their general

knowledge. Things which are obvious and things which might very well be said to be known by everybody need not be proven as matters of fact and complaint could hardly be made of that part of the learned trial Judge's instruction in which he said to the jury that they might apply their general knowledge in passing upon the question of whether we are at war. But the learned trial Judge went further than that. Without any proof whatsoever, he permitted them to apply their general knowledge in determining whether the dispatches published by the defendants contained false statements. This is extending the doctrine beyond its limitations and the learned Trial Judge extended the doctrine still further when he said to the jury that they had a right to apply their fund of general information to any other questions which were in like manner a matter of public knowledge and general information. Standing alone, this might seem to be a proper expression of the law, but, following his instruction to the jury that they might apply their general knowledge in determining the question of the falsity in the dispatch, it gave to the jury an unlimited right to use any general information at their disposal in reaching their verdict.

But the important part of the instruction that it is contended is error, lies in his permitting the jury to guess without any proof that the element which was necessary to make the publication an offense existed.

4. Binding Instructions.

The learned Trial Judge refused to instruct the jury to render a verdict of "Not Guilty". As has been shown by the preceding argument of the appellants, certain such instruction should have been given with relation to counts numbered 1, 5, 6, and 9. This leaves only for our consideration counts numbered 2, 3, and 4. These counts charged the obstructing of the recruiting and enlistment service of the United States. Louis Werner was convicted upon counts 2 and 4, Martin Darkow was convicted upon count 3. None of the other defendants were convicted under these counts.

It was the intention of counsel for the appellants to argue that it was necessary that evidence should be introduced to show the actual interference with the enlisting and recruiting, but, inasmuch as this question has been decided against the contention of the appellants, no argument will be made upon that point, nor will any argument be made upon the unconstitutionality of the Espionage Act as an interference with the right of free speech, as this question has been decided.

But, it is respectfully submitted, an examination of the articles charged to have been the means of obstructing recruiting and enlistment will show that they do not necessarily have this effect. The article in count 2 is an editorial upon the Fourth of July. It might also be said to be an article favoring pacifism. It is anti-English in its language and is an argument against the War but does not in any way attempt to obstruct the recruiting or enlistment service of the United States. The article set forth in count 4 is a comment upon the failure of recruiting and it might well be said that it is an

editorial discussing fairly a question of the day, such as might have been found in many papers printed in the English language at the time and would not have been noticed and the publication of which would not have been charged as an offense had it not been for the fact that it was published in a German newspaper in the German language. The convictions of the defendant Louis Werner upon these two counts numbered 2 and 4 of the indictment came with his conviction upon the other counts. It is respectfully submitted, in addition to the argument heretofore advanced as to why the jury should have been instructed to render a verdict of "Not Guilty" upon these counts, that a conviction should not be permitted to stand, even upon these counts in this case when the entire bill of indictment was submitted to the jury for their determination without the necessary proof being offered as to the other counts and under a charge that it left nothing else for the jury to do but to convict.

The appellant Martin Darkow was convicted upon the third count of the bill of indictment which charged the obstruction of recruiting and enlistment service of the United States. The article published and for which the jury held him responsible contained a dispatch from Berlin, quoting an article published by Professor Jenny, under the title of "Americanism". The article was not one of the defendant's composition, but a news article taken from another paper and the argument advanced by the appellants in support of their contention that the jury should have been instructed to acquit upon counts numbered 2 and 4 is applicable here

All of which is respectfully submitted.

WILLIAM A GRAY,
Attorney for Appellants.

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In the Supreme Court of the United States.

OCTOBER TERM, 1919.

PETER SCHAEFER, PLAINTIFF IN ERROR, v. THE UNITED STATES.	No. 270.
PAUL VOGEL, PLAINTIFF IN ERROR, v. THE UNITED STATES.	No. 271.
LOUIS WERNER, PLAINTIFF IN ERROR, v. THE UNITED STATES.	No. 272.
MARTIN DARKOW, PLAINTIFF IN ERROR, v. THE UNITED STATES.	No. 273.
HERMAN LEMKE, PLAINTIFF IN ERROR, v. THE UNITED STATES.	No. 274.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR THE UNITED STATES.

STATEMENT OF CASE.

This is a direct writ of error from this court to the District Court for the Eastern District of Pennsylvania, under section 238, Judicial Code, the ground

alleged being that the constitutionality of the so-called Espionage Act was drawn in question. This constitutional question is, however, foreclosed by the decisions of this court in the cases of Schenk, Frohwerk, and Debs, reported in 249 U. S. Since, however, the writs of error were sued out prior to the rendering of these decisions, the other errors alleged will be examined by this court. (*Sugarman* v. *United States*, 249 U. S. 182.)

The indictment (Rec. 9–51) contained nine counts.

Count one charged the making and conveying, jointly by all the defendants, of false reports and statements with intent to promote the success of Germany in the war. It gave 13 instances of such false reports, all of them being articles published in the Philadelphia Tageblatt, or its Sunday edition, the Sonntaggsblatt, identified in the count by the letters "a" to "m," inclusive, and purporting to be items of news received by the said papers from outside sources, such as London, Berlin, Petrograd, and Washington. Counts five, six, seven, and eight were of a precisely similar character to count 1, except that they selected one of the instances of a false report alleged in count one, and made such particular publication the subject-matter of a special count.

Counts two, three, and four charged the defendants with jointly obstructing recruiting, and with jointly causing insubordination, count two being based on an editorial published in the Sonntaggsblatt on the "Fourth of July" (R. 33), count three on a news

item in the Tageblatt (R. 36) headed "Yankee bluff," and count 4 on an editorial in the Tageblatt entitled "Failure of recruiting." (R. 38.)

Count 9 charged a conspiracy by all of the defendants under section 4 of the so-called Espionage Act to violate section 3 thereof in all its provisions, viz, by making false reports, by obstructing recruiting, and by causing and attempting to cause insubordination, charging as overt acts the publication of certain articles in the Tageblatt and the mailing of the paper.

Demurrers were filed to the indictment by all of the defendants, but they were overruled, the opinion of the trial judge appearing on pages 61 and 62 of the record. The defendants then pleaded "Not guilty," and a trial was had, in which every question was fully and fairly dealt with. The trial judge in every respect exhibited judicial impartiality, the defendants were represented by able counsel, diligent to inform the court and jury of every point in their favor, full arguments were made to the jury, the court charged them fairly, and after due deliberation a verdict was returned, which in itself demonstrated the care with which the jury had considered the case.

Schaefer, Vogel, and Lemke, who had had no direct, actual connection with the preparation and publication of the articles complained of, were acquitted on counts 1 to 8, inclusive, but were convicted on the conspiracy count, 9. Werner and Darkow, the editor and assistant editor of the Tageblatt and Sonntaggsblatt, were convicted on

count 1, charging false reports. Werner was convicted on counts 2 and 4 (obstructing recruiting) on account of the editorials on the "Fourth of July" and on "The failure of recruiting." Darkow was convicted on count 3 (obstructing recruiting) on account of the news item headed "Yankee bluff," and on counts 5 and 6 charging false reports in respect of two news items specified also in count 1, viz, "Further economies" and "War of the rich." Werner and Darkow were also convicted, along with the other defendants, on count 9 charging a conspiracy to do all the things the actual doing of which was charged in counts 1 to 8.

On the return of the verdict, the defendants moved for a new trial and in arrest of judgment. This motion was denied, the opinion of the court appearing on pages 420 to 425 of the record.

The defendants were thereupon sentenced as follows:

Schaefer, one year;
Vogel, one year;
Lemke, two years;
Werner, five years;
Darkow, five years.

It is to these judgments that the present writs of error have been sued out. Since, however, no one of these sentences equalled the maximum fixed by sections 3 and 4 of the Espionage Act for a single violation of their provisions, viz, 20 years, it is sufficient if the defendants, or any particular one of them, were properly found guilty on any single count

of the indictment. Moreover, as to Werner and Darkow, who were found guilty under count 1 of making false reports in a number of specified cases, it is sufficient if there was evidence to connect them, or either of them, with the making or conveying of any one of the reports set out in that count.

ASSIGNMENTS OF ERROR.

The assignments of error (Rec. 429–435) number 14.

Of these the ones which may be said to raise the constitutional question, viz., 1, 2, 4, and 5, have, as has been said above, been since held by this court to be not well taken.

Three raises a point as to the right of joint defendants to peremptory challenges (Rec. 429, 430).

All the other assignments, being directed to the charge of the court to the jury, in substance raise in different forms the question of the fairness of the trial and whether the defendants were properly convicted.

ARGUMENT.

I.

Assignment of error No. 3.—Defendants jointly indicted for a felony, or indicted together for a conspiracy, are entitled to only 10 peremptory challenges for all.

(*a*) It would seem that at the common law joint defendants had the right to challenge separately to the full number allowed by law. *United States* v. *Marchant*, 12 Wheat. 480, 481.

(*b*) The rule was changed by the act of June 8, 1872, 17 Stat. 282, amending in this respect section 2

of the act of March 3, 1865, 13 Stat. 500 (Rev. Stat Sec. 819, Jud. Code, Sec. 287), and providing that—

> in all cases where there are several defendants, the parties shall be deemed a single party for the purposes of all challenges under this section.

The statute is unambiguous, and has uniformly been construed to cover cases of joint indictments or indictments of several for a conspiracy. *United States* v. *Hall*, 44 Fed. 883; *Emanuel* v. *United States*, 196 Fed. 317, 320, 321; *Kettenbach* v. *United States*, 202 Fed. 377, 382; *Schwartzberg* v. *United States*, 241 Fed. 348, 351. See also *Mutual Life Insurance Company* v. *Hillmon*, 145 U. S. 285, 293. In the case of *Schwartzberg* v. *United States*, supra, the court used the following language:

> The present Federal statute (in the respect under consideration) is much older than the Judicial Code, having passed from a statute of 1865 into section 819, Rev. Stat. (Comp. St. 1916, sec. 1264). *U. S.* v. *Hall* (C. C.), 44 Fed. 883, 10 L. R. A. 323. It certainly enlarged the common law, in that peremptory challenges were given in civil causes (*Stone* v. *Segur*, 11 Allen (Mass.), 568), and removed that doubt in respect of criminal trials not involving capital punishment, reflected in the older writers, and many cases (Blackstone, Bk. 4, p. 353; *Gray* v. *Reg.*, 11 Cl. & F. 427; *U. S.* v. *Shackleford*, 18 How. 588, 15 L. Ed. 495). But it did not change nor seek to alter the accepted method of interpreting the word "party," nor the rights of several defendants to the

same indictment. Such defendants have always been regarded as one party, there is a legal obligation on them so to act, and the law (absente any statutory change) insists on so treating them. The very decisions relied on by these plaintiffs in error sustain this historical position. *State* v. *Cady*, supra; *People* v. *McCalla*, 8 Cal. 301; *People* v. *O'Laughlin*, 3 Utah, 133, 1 Pac. 653; *Cochran* v. *U. S.*, 14 Okl. 108, 76 Pac. 672; *State* v. *Jacobs*, 106 106 N. C., 695, 10 S. E. 1031. And see, generally, Thompson & M. on Juries, p. 299 et seq.

It results that the contention becomes this, viz, that a body of defendants (in civil or criminal causes), or any one of them, may, by refusing to act in the manner prescribed by statute and imposed by historic interpretation, render any peremptory challenge impossible, or the exercise of the right by others illegal. Whether in this case the trial judge would have been justified in treating defendants' refusal to act jointly as a surrender or waiver of all peremptory challenges need not be considered; he chose the gentler method of exceeding the statutory limit, and, in favor of the accused, granted to each in severalty a reasonable share of the right they had jointly declined.

This was a proper exercise of discretion furnishing no ground for complaint, fundamentally because (as above stated) challenge is but the right to reject up to the legal limit, and such right does not inhere in any particular one of a plurality of either plaintiffs or defendants, but in the defendant or plaintiff party considered as a unit. When that party

refused to act as a party, it was not error t
save the right by discretionary subdivision.

(*c*) The statute is, of course, constitutional, sinc
the Constitution merely gives the defendant the righ
to trial by an impartial jury. It does not stereotyp
the number of peremptory challenges. In *Unite*
States v. *Shackleford*, 18 How. 588, it is recognize
that the matter of peremptory challenges is gove.ne
by municipal law, and in *United States* v. *Hall*, *supra*
it is specifically held by Judge Spee.r that section 81
R. S., is constitutional.

The only reason advanced by the plaintiffs in erro
for the claim that the statute is unconstitutional i
that it discriminates against joint defendants to suc
an extent as to deny them due process of law. Thi
would only be the case, however, if the placing o
joint offenders in a class separate from single offende
was grossly arbitrary and unreasonable, which, o
course, it is not. On the contrary, the classificatio
is eminently sensible. In the first place the defend
ants make the class themselves by their voluntar
action. They determine whether their action shall b
joint or several. In the second place, a joint offens
is by its very nature a more serious matter to th
State than a several offense. In the third place, t
allow each one of many joint defendants as man
peremptory challenges as he would be entitled to
tried separately would be to embarrass the du
prosecution of joint offenders to the extent of
reductio ad absurdum. Thirty joint defendants eac

claiming a right to challenge peremptorily 10 of the jury panel would bring the administration of criminal justice into contempt. That a regulation by the legislature of the matter of challenges does not deny due process of law, or deny privileges and immunities, or improperly discriminate, has been decided by this court in the cases cited in a note.[1]

II.

Other assignments of error.

A. THE EVIDENCE AND PROCEEDINGS AT THE TRIAL.

Since all of the defendants were convicted on count 9 for conspiracy, while only Werner and Darkow were convicted on counts 1 to 8, inclusive, covering the substantive offenses, it will aid the proper presentation of the case to take up the evidence against the latter on counts 1 to 8 before considering the case on the conspiracy count.

1. The Proceedings as to Werner and Darkow on counts 1 to 8.

(a) *The "false report" counts.*

Count 1 alleges the making of "false reports" with intent to promote the success of Germany by publishing in the Philadelphia Tageblatt and Sonntagsblatt certain news items purporting to have been received by the managers of the paper from various places such

[1] *Hayes* v. *Missouri*, 120 U. S. 68, 71; *Brown* v. *New Jersey*, 175 U. S. 172, 176; *Gardner* v. *Michigan*, 199 U. S. 325, 333; *Lang* v. *New Jersey*, 209 U. S. 467, 472; *Shevlin-Carpenter Company* v. *Minnesota*, 218 U. S. 57, 69.

as Washington, Berlin, etc., and all dealing with th war, which in fact, however, were not published a received or secured but as altered in importan respects favorable to Germany.

The Tageblatt was a paper published in German i Philadelphia, and representing the views of th German community. Prior to the war it had deal mostly with matters concerning German societies an labor (Rec. 216, 217, 218), but after the outbreak war it published editorials and what purported to b news items dealing with the war (Rec. 287, 288) an was pro-German in its attitude and policy (Re 308, 315, 317). While its news items appeared upo their face to be received from news agencies such as th Associated Press (Rec. 11 et seq.), in fact they we taken from other papers, English and German (Re 222, 288). The official connection with it of th defendants or plaintiffs in error was Schaefer, pres dent, Vogel, treasurer, Lemke, business manage Werner, chief editor, Darkow, assistant edit (Rec. 114).

As to the conclusiveness of the evidence that t articles as taken from other papers were falsified the manner described in counts 1, 5, 6, 7, and 8, some one connected with the paper, there is question on this record, nor was it, in fact, disput at the trial. All of the exhibits introduced in e dence by the United States in support of the s counts are not in the printed record, but are in t files of this court in the original form, but enou

appears to show that the original clippings were introduced with the changes made on their face, and in some instances the writing in which the changes were made was identified, or a comparison was presented between the original and the article as published (Rec. 126, 199 et seq.).

As to Werner's connection with the false reports, it must be remembered that he was the chief editor of the paper, and, on account of his long connection therewith, had almost absolute control over what appeared in it (Rec. 218). It is true that, owing to bad health, he did not have as much to do with the "foreign" (or nonlocal) news during the period covered by the indictment as he had previously (Rec. 22, 288), but he still came to the office, and the jury had a right to presume that he was cognizant and approved of the articles set out in count 1. Moreover, it must be remembered that the paper was pro-German before the United States entered the war, and that, admittedly, it did not at once change its attitude (Rec. 309, 315), so that it was probable Werner would approve of such changes as were made in the items as set out in count 1. Also the different exhibits were shown to the jury, they saw the exact character of the changes, they understood the method of transacting business in the editorial room, so that they were peculiarly fitted to determine Werner's connection with these news items. In addition, it was shown that Werner habitually wrote editorials (R. 116, 145), even preparing them in

advance and leaving them in the office to cover periods of absence (R. 146, 221, 288). Darkow made up "foreign news items," by which was meant all news other than strictly local city news (R. 115, 147). As to one of them, viz, Exhibit 1 (Rec. 11, 199, 343, 378), entitled "The Crisis," there is direct evidence of Werner's responsibility for it. It appeared on Sunday, June 24. Darkow's day off was Saturday, so that he did not prepare this item (Rec. 222, 290); news for the Sunday paper was prepared by Szepancsky with Werner's help (Rec. 222); Szepancsky did not prepare Exhibit 1 (Rec. 148); the Government showed that no other person who worked on the paper at that time wrote it (R. 115, 121, 138, 148, 164, 223, 290). Werner does not deny that he was responsible for it (Rec. 223). The jury, therefore, could well find him guilty as to this item, and this would be sufficient to justify a verdict on the whole of count 1.

As to Darkow, there is no doubt whatsoever as to his connection with most of the items in count 1. (See his testimony, Rec. 288–292.) A brief survey of the record will sustain this view.

The article under subhead (*b*) "confirmed" (R. 12, 203, 204), taken from the Philadelphia Demokrat of the evening previous, which was the source of the alleged dispatch and false report, was shown to have been clipped from that paper, and a copy slip with the ink changes was introduced in evidence (R. 203, 204). Darkow admits the ink changes on the copy

slip were his (R. 291). The false report consisted in the defendants having omitted from their reproduction of the said alleged dispatch a material portion of the same.

Subhead (*c*) "Ups and downs" (R. 13) was published July 20, 1917, and the source thereof, the alleged dispatch, appeared in the Philadelphia Demokrat on the evening previous (R. 204). The jury was justified in finding Darkow prepared this (R. 292), as all of the others who worked at that place testified that they did not (R. 122, 138, 139, 148, 164, 224), the falsity of this report consisting in the willful omission in the reproduction of the alleged dispatch of portions of the article appearing in the source thereof heretofore referred to.

"What Washington hopes" (R. 14) was subhead (*d*). The source of this false report was the Demokrat of the previous evening (R. 204). Darkow did not know whether he prepared it (R. 292). The other employees did not (R. 122, 138, 139, 149, 164). This false report consisted of the reproduction of the article in the Tageblatt, which omitted two paragraphs from the source thereof, to wit, the Demokrat.

"Serbia" (R. 17), subhead (*e*), was a false report emanating from the Tageblatt and based upon an article appearing on the previous evening in the Demokrat. (R. 204.) Darkow did not know whether he prepared this (R. 293). However, it was Darkow's job to prepare such articles (R. 147, 115, 116, 163, 288). The other employees did not pre-

pare it (R. 122, 138, 139, 149, 164). The false report in this instance was the false reproduction of a purported original dispatch which was in truth an article which appeared in the Demokrat of the evening previous, but which was false, in that a material paragraph favorable to the United States and its Allies was omitted in the reproduction.

"An interim," subhead (*f*) (R. 18) was a false report of a purported dispatch, and was in truth an article which appeared in the Demokrat of the previous evening from which the defendants omitted four portions of paragraphs which were unfavorable to Germany, and to that extent falsely reported the source of the alleged dispatch. (R. 205.) Darkow did not know whether he prepared this in the form in which it appeared. (R. 293.) None of the other employees did prepare it. (R. 122, 138, 139, 149, 164.)

"Nothing certain" (R. 21), was subhead (*g*). The source of this alleged dispatch was the Demokrat of the previous evening. (R. 205.) Darkow did not know whether he prepared it or not. (R. 294.) The other employees did not prepare it. (R. 122, 138, 139, 149, 164); the false report consisting in that the reproduction of the alleged dispatch from the source above mentioned failed to include a paragraph which was unfavorable to the German cause.

"War of the rich" (R. 23) was subhead (*h*). The Philadelphia Demokrat of August 21, 1917, con-

tained the source of this alleged dispatch, to wit, a news article. The Tageblatt appeared with the same article on August 22, 1917, wherein there was a change which would indicate a state of affairs favorable to Germany and unfavorable to the United States, in that, in the false report reproduced by the defendants the word "bread lines" was changed into "bread riots" (R. 205). There was a copy slip in this instance with the original clipping from the Demokrat pasted on it, with handwriting which was identified as that of Darkow. (R. 205.) Darkow admitted that the changes were his, and attempts to explain the same in a manner which is inconclusive. (R. 294.) "Further economies" (R. 26) was subhead (*i*). This article appeared in the Tageblatt on September 3, 1917, as a dispatch. The source thereof is clearly the Staats Zeitung of September 2, 1917 (R. 206). This was Exhibit No. 35, which was identified as having appeared in the Staats Zeitung by Schroeder, the editor (R. 206). Darkow admitted it was from the Staats Zeitung, and that the copy slip containing a clipping from the alleged dispatch from the Staats Zeitung with certain handwriting was his work, and that the addition thereto was what he termed editorial comment. (R. 297, 298.) The false report in this instance was the reproduction of said article with an addition thereto which was not in fact a part of the original article, the added matter being favorable to the German cause.

"Sarrail's troops beaten" (R. 27), subhead (*j*). The original source appeared as a caption of a dispatch on September 3, 1917, in the Staats Zeitung (R. 206). On the following morning the article appeared with the caption thereof changed in a manner favorable to Germany, the false report consisting in the reproduction of the article in a form other than that in which it was received by the defendants in the clipping from the Staats Zeitung. The caption appearing in the Staats Zeitung being "Sarrail's troops in great attack" (R. 206). A copy slip with the clipping from the Staats Zeitung showing the changes in Darkow's handwriting was introduced in evidence (R. 206). Darkow admits the clipping and the changes (R. 298, 299).

"For political reforms," subhead (*k*) (R. 29), was the purported dispatch with actually was clipped from the Demokrat on the previous evening (R. 206). Darkow did not know whether he prepared this clipping (R. 299). There was introduced in evidence a copy slip with the clipping but no handwriting thereon (R. 206). None of the other employees prepared it (R. 123, 138, 139, 149, 164, 165); the falsity of the report being that in the reproduction of the clipping from the Demokrat, as an original dispatch, the defendants omitted a sentence which was unfavorable to the German cause, thereby garbling it so as not to offend their German readers.

"What does this mean?" subhead (*l*) (R. 31), was a clipping from the Staats Zeitung of September 6, 1917, which appeared the day after in the Tageblatt (R. 206). There was a copy slip containing the clipping from the Staats Zeitung with the change in Darkow's writing (R. 206). Darkow admits changing the clipping (R. 300, 301). The editor of the Staats Zeitung identified the clipping (Exhibit 51) as a clipping from his paper for that date (R. 183). The false report consisted in the reproduction of the article headed "Suicides in Pershing's army reported," to which the defendants in the false report added the word "Many."

"Ready for the fray" (R. 33), subhead (*m*), was a purported dispatch which was clipped from the Demokrat of the evening previous (R. 207). There was a copy slip introduced in evidence with a clipping from the Demokrat and containing thereon the handwriting of Darkow. (R. 207.) Darkow admitted writing on the copy slip. (R. 302.) The false report consisted in the wilful omission of a concluding sentence which was unfavorable to the German cause.

That the reports set forth in count 1 were false to the knowledge of the persons making them is entirely clear, and as we understand it, not denied. That is, the defendants took a news item from another paper, English or German, changed it by omitting something from it or adding something to it, and published it as changed. The jury had a right to find that they did this with intent to deceive, and not inadvertently

or to save space, since there were so many instances of such changes, and in *every* instance the change made the news item more favorable to Germany.

It may be claimed that the items as so changed were not false as measured by an external standard of truth, but it is here that the use of the word "reports" in the statute becomes significant. The statute uses this word in addition to the word "statement." The latter expression is the apt one to convey the idea of something conforming merely to an external standard of truth. The former clearly refers to a "statement" of external fact, which, in addition, has been brought to the attention of the reporter in a certain form. For example: that certain things occurred in Russia at a certain time is the matter of a "statement;" that a person was told that certain things occurred in Russia at a certain time is the matter of a "report." In the former case the question is whether the things did occur or not; in the latter, whether the reporter was informed that they occurred, or not. The two things are different, and Congress plainly intended to include both and to punish falsity as to both.

Nor is the making of a false "report" any less dangerous to the State than the making of a false "statement." Most statements of fact are based upon hearsay, and the hearsay often takes the form of "reports." This is especially true of the public press and, in a lesser degree, of pamphlets, etc., printed and circulated. It is properly supposed that

newspapers have peculiar facilities for ascertaining the truth of public matters, and that when they have ascertained it they will publish it as ascertained. This furnishes the raw material for statements of fact and opinion by the public. If the newspapers falsify the matter received by them so as to make a false report thereof to their readers, one of the important sources of public information is made an obstruction, instead of an aid, to the ascertainment of the truth. Whether the false "report" is true as a matter of fact, or is nearer the truth than the facts as ascertained by the reporter, is immaterial, since the reader is entitled to make up his own mind as to this. If the persons responsible for the publication of the "reports" think they do not correctly represent the facts, they must, if they wish to avoid making false "reports," confine their opinions to the media of editorial or other comment.

What has been said above is sufficient to show that Congress understood the important distinction between false reports and false statements, that it deliberately made the making of both an offense, that the jury had a clear right to find that the defendants Werner and Darkow made one or more of the reports mentioned in count 1, that the reports so made were false, and that they were made with intent to deceive.

The only remaining question on this feature of the case is, therefore, whether there was evidence that the false reports were made with intent to promote the success of Germany. To argue this question at any

length would be to waste the time of the court. The paper was pro-German before the entrance of the United States into the war; it did not immediately change (Rec. 308, 315, 317); Lemke's report shows, on the contrary, that it continued to make a stronger stand in favor of Germany than other German papers (Rec. 334–338, 239, 343), every change made in the news items received was one favorable to Germany, and the other articles from the paper offered under the obstructing recruitment counts and to show intent generally were filled with remarks, innuendoes, statements, arguments, etc., derogatory of the United States and favorable to Germany. The jury, therefore, were fully justified in finding that the false reports in question were made with intent to promote the success of Germany.

Assignment of error 12.

One of the assignments of error, viz, 12, bears particularly upon the question of proof under the false-report counts and may convey a false impression unless it is explained at this point. Counsel for defendants asked the court to charge that before the jury could convict it must find the defendants guilty as charged in the indictment, viz, that they falsified the original reports received by them in the very manner alleged in the indictment (Rec. 411, 433). This charge was refused, although on a superficial consideration it might seem that it should have been given. When, however, the language of counsel is carefully examined in connection with the state-

ment of the trial judge on the motion in arrest of judgment and for a new trial (Rec. 420, 421, 422), the impropriety of the request becomes evident. The reports in question, as published by the defendants, purported to be original dispatches from Berlin, Washington, etc., etc. The indictment alleged that these original dispatches had been falsified, and in all probability the pleader had in mind a change in news items received from a regular news bureau. It developed at the trial, however, that the Tageblatt had no news service and that the reports had simply been clipped from other papers and then changed. It was this situation which the request to charge called attention to, and which it claimed constituted a failure of proof. Clearly there is no merit in the claim, since the indictment merely referred to the sources of the defendants' information, whatever they might be, and alleged their falsification in specific language. The defendants knew what those sources were, so that they can not possibly have been prejudiced by what occurred, and, as a matter of substance and of common sense, it can not make any difference in the nature of the offense whether what was falsified was immediate news dispatches received by the Tageblatt or mediate news items clipped from other papers.

(*b*) *The obstructing recruiting counts.*

As stated above, Werner and Darkow were severally found guilty of obstructing recruiting, and the total sentence was only five years, so that if they

were properly found guilty on the obstructing counts it is sufficient without reference to the false reports counts. It is admitted that Werner wrote the Fourth of July editorial (Rec. 35, 231), and Darkow prepared the Yankee Bluff article (Rec. 36, 37, 303). These publications do not differ from those held by this court in the Schenk, Frohwerk, and Debs cases to be of a character to justify a verdict of guilty on such a count. The Fourth of July editorial consists of a bitter attack upon England, with statements that the Fourth of July is become a farce, that the administration brought on the war simply to help England, that the people of this country did not want the war, and that they must and will demand immediate peace. The "Yankee bluff" item gives a dispatch from London quoting the American ambassador to the effect that the United States will make all sacrifices necessary to win the war, even to the extent of sending ten million men to France, and follows it with a dispatch from Berlin giving the views of some German professor ridiculing in the coarsest manner the efforts of the United States. Over the whole was placed the caption "Yankee bluff," and Darkow in effect admitted that the heading was intended to be pro-German (Rec. 317). Certainly the jury were entitled to find that these publications were made with intent to obstruct recruiting, and in fact did so.

(c) *The conspiracy count.*

A conspiracy is a combination of two or more persons by some concerted action to accomplish an unlawful end. In the case at bar the combination and concerted action consisted in the connection of the defendants with a certain newspaper, the Tageblatt. As to this there was no dispute. Schaefer was president; Vogel, treasurer; Lemke, business manager; Werner, chief editor; and Darkow, assistant editor; their names appearing in these several capacities on the editorial page. This made them, in and of itself, part of a combination responsible for the paper, and if the *general* attitude of the paper in its news items and editorials, as distinguished from its occasional, inadvertent attitude was one of violent opposition to to the war and to the efforts of the United States therein, and to the attempt to raise an army by draft which should thereafter be an efficient instrument against Germany, the defendants can not escape responsibility under the conspiracy count because they or any one of them did not actually write the editorials or prepare the news items in question. The record clearly shows that this was the general attitude of the paper not only by the numerous articles offered in evidence, but also by evidence of the defendants themselves to the effect that the paper was pro-German prior to the entrance of the United States into the war, that it had not materially changed its attitude during the period covered by the alleged conspiracy, and that it represented the views of its German

readers among whom the defendants were numbered. Of course the evidence of conspiracy was clearer against the two editors, Werner and Darkow, than against Schaefer, Vogel, and Lemke, but this is always the case where certain of the conspirators are in the background and less prominent in the actual workings of the conspiracy than others. Even as to Schaefer, Vogel, and Lemke there is evidence of direct participation in the overt acts. Lemke made a memorandum (Rec. 212, 334, *et seq.*) which the jury had a right to believe represented a record of meetings of the board of directors (Rec. 343, 344) in which he stated that the Germans were not satisfied with the attitude of the Gazette (another German paper), that there was an opportunity in consequence to procure additional subscribers for the Tageblatt, and later, that such subscribers had been got through the strong stand taken by the latter, though the Department of Justice had objected to it. Vogel heard the report, and, if Schaefer did not, he was bound as president to know of such matters. He and Vogel had a double interest in the paper, first as readers and officers of it and second as representing labor associations which owned stock in it and held a mortgage on its property (Rec. 341, 347). It is inconceivable that they should not have been thoroughly cognizant of the character of the articles published in it; yet there is no evidence that they ever interfered or indeed indicated their disapproval in any way. All this fully justified the jury in finding them, together with Lemke, guilty on the conspiracy charge.

As to Werner and Darkow, it has already been argued that the articles and editorials published in the papers were violative of section three of the Espionage Act, and that being so their guilt as conspirators under section four of said act can not be denied.

B. ASSIGNMENTS OF ERROR 6, 8, 9, 10, 11, AND 14.

(*a*) Assignments of errors 4 and 5, asking the court to direct a verdict of not guilty, are, in so far as they raise the constitutional question, as well as in so far as they raise the question of the sufficiency of the evidence, dealt with above.

(*b*) The same is true of assignments 12 and 13, based upon the fact that the false reports were not taken from news dispatches but from other newspapers.

(*c*) Assignments 10 and 14 relate to the charge of the court to the effect that the jury was entitled to call upon its general knowledge as an aid in determining the truth or falsity of the reports. Without admitting that this charge was in any respect incorrect, it is submitted that it could not have prejudiced the defendants in any way, since the indictment dealt with false reports, not false statements, and there was evidence before the jury that the reports as received were in fact falsified; so that it was immaterial whether, as so falsified, they conformed to an external standard of truth or not.

It is settled that the jury may, like the court, take judicial notice of those facts which are matters of

general knowledge, and not only may, but must, apply their common sense and their knowledge of the world in the interpretation of the evidence offered before them. In *Head* v. *Hargrave*, 105 U. S. 45, 49, this court said:

> While they (the jury) can not act in any case upon particular facts material to its disposition resting in their private knowledge, but should be governed by the evidence adduced, they may, and to act intelligently they must, judge of the weight and force of that evidence by their own general knowledge of the subject of inquiry.

In *Commonwealth* v. *Peckham*, 2 Gray, 514, it was held that the jury was entitled to find that gin was intoxicating without any evidence whatsoever upon the subject. Metcalf, J., delivering the opinion of the court, said:

> Now everybody who knows what gin is, knows not only that it is a liquor, but also that it is intoxicating. And it might as well have been objected that the jury could not find that gin was a liquor without evidence that it was not a solid substance, as that they could not find that it was intoxicating without testimony to show it to be so. No jury can be supposed to be so ignorant as not to know what gin is. Proof, therefore, that the defendant sold gin is proof that he sold intoxicating liquor. If what he sold was not intoxicating liquor, it was not gin.

In *Hoare* v. *Silverlock*, 12 Q. B. 624, the court of Queen's Bench refused to interfere with a verdict

finding that the term "Frozen Snake" was libelous, the Lord Chief Justice remarking:

> We are not called upon here to take judicial notice that the term "Frozen Snake" had or had not the meaning ascribed to it by the plaintiff, but to say, after verdict, whether or not a jury were certainly wrong in assuming that those words had the particular meaning.

(*d*) Assignments 6, 8, 9, and 11 deal with certain general statements made by the trial court in its charge. They must be read in connection with the whole charge, and with the whole case as developed by the evidence. When so read there is nothing in them which would justify this court, under the principles laid down in section 1025, R. S., and in section 269, Judicial Code, as amended by the act of February 26, 1919, c. 48, in reversing these judgments.

III.

The bill of exceptions.

The bill of exceptions in this case occupies 334 pages of the printed record (65–420). Paragraph 2 of rule 4 of this court provides that only so much of the evidence shall be embraced in a bill of exceptions as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved, and that such evidence shall be in a condensed and narrative form. Paragraph 1 of rule 4 provides that in order to enable the clerk of the lower court to transmit to this court a proper record and to reduce the size of the transcript

thereof, the attorney for plaintiff in error shall indicate to said clerk the portions of the record which are to be incorporated. In the cases at bar the bill of exceptions is nothing more nor less than a transcript of the stenographer's notes of what occurred at the trial. It presents, it is true, a picture of a certain sort, but it is a picture which is constantly out of focus, being either larger than the reality or smaller. No attempt has been made to select any portion of the evidence in order to illustrate the assignments of error. This task has been left to opposing counsel and to this court. Such a procedure is in direct violation of the rules of this court, and it is submitted that, therefore, either the bill of exceptions should not be considered at all, or that, if it be, every possible presumption should be indulged in favorable to the propriety of the proceedings at the trial.

CONCLUSION.

The judgment of the court below should be affirmed.

ALEX. C. KING,
Solicitor General.
ROBERT P. STEWART,
Assistant Attorney General.
W. C. HERSON,
Attorney.

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SCHAEFER *v.* UNITED STATES.

VOGEL *v.* UNITED STATES.

WERNER *v.* UNITED STATES.

DARKOW *v.* UNITED STATES.

LEMKE *v.* UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Nos. 270–274. Argued October 21, 1919.—Decided March 1, 1920.

The Espionage Act is constitutional. P. 470. *Sugarman* v. *United States*, 249 U. S. 182.

As applied to any of several defendants in a criminal case, the provision of Jud. Code, § 287, that all shall be deemed a single party for the

purpose of peremptory challenges, is constitutional. P. 470. *Stilson* v. *United States*, 250 U. S. 583.

In a prosecution of several under the Espionage Act, *held* that the evidence was sufficient to warrant conviction as to some but not as to the others. Pp. 470, 478.

In a prosecution under the Espionage Act for wilfully making and conveying false reports and statements with intent to promote the success of Germany and obstruct the recruiting and enlistment service of the United States to the injury of the United States in the war with Germany, where there was evidence that persons conducting a German-language newspaper systematically took news despatches from other papers and published them with omissions, additions, and changes, *held*, that the falsity of such publications, within the meaning of the statute, depended on the fact and purpose of the alterations and the resulting tendency of the articles to weaken zeal and patriotism and thus hamper the United States in raising armies and conducting the war; that the determination of such falsity, the evidence being sufficient, was clearly for the jury and not for the court; and that the court rightly allowed the jury to have recourse to their general knowledge of the war and war conditions in making such determination. P. 471.

The constitutional provision as to liberty of speech and press does not require or authorize the court, wherever criminal abuse of those rights is charged, to override a verdict of guilty by substituting its own opinion of the evidence for that of the jury. P. 474.

Evidence sufficient to sustain any one of several counts will sustain a conviction and sentence upon all, if the sentence does not exceed that which might lawfully have been imposed under any one of them. P. 482. *Abrams* v. *United States*, 250 U. S. 616.

254 Fed. Rep. 135, affirmed in part and reversed in part.

THE case is stated in the opinion.

Mr. William A. Gray and *Mr. Henry John Nelson* for plaintiffs in error.

Mr. Assistant Attorney General Stewart, with whom *The Solicitor General* and *Mr. W. C. Herron* were on the brief, for the United States.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Indictment in nine counts under the Espionage Act. Preliminary to indicating the special offenses we may say that the indictment charges that at the dates mentioned therein the Philadelphia Tageblatt and the Philadelphia Sonntagsblatt were newspapers printed and published in the German language in Philadelphia by the Philadelphia Tageblatt Association, a Pennsylvania corporation of which defendants were officers; Peter Schaefer being president, Vogel treasurer, Werner chief editor, Darkow managing editor, and Lemke business manager.

That on the dates mentioned in the indictment the United States was at war with the Imperial German Government and the defendants "knowingly, wilfully and unlawfully" "caused to be printed, published and circulated in and through" one or other of those newspapers, false reports and statements of certain news items or despatches purporting to be from foreign places, or otherwise violated the Espionage Act through editorials or other published matter.

In count one the charge is that the intent was "to promote the success of the enemies of the United States, to wit, the said Imperial German Government."

In counts two, three and four the charge is the obstruction of the "recruiting and enlistment service of the United States, to the injury of the United States."

In count five the purpose of publication is charged to be the making of false reports and statements with intent to promote the success of the enemies of the United States.

In counts six, seven and eight there are charges of intent to like purpose.

Count nine charges a conspiracy entered into by defendants to be executed through the agency of the two

newspapers for the purpose (a) to make false reports and statements with intent to interfere with the military and naval operations and success of the United States and to promote the success of its enemies; (b) to cause insubordination, disloyalty and mutiny in the military and naval forces of the United States; (c) to obstruct the recruiting and enlistment service of the United States. And there were specifications in support of the charges.

Demurrers were opposed to the indictment which stated in detail the insufficiency of the indictment to constitute offenses. The demurrers were overruled, the court considering that the grounds of attack upon the indictment could be raised at the trial.

The defendants were then arraigned and pleaded not guilty and when called for trial moved for a severance urging as the reason that the courts had ruled that defendants when tried jointly must join in "their challenge to jurors." Counsel in effect said they contested the ruling and considered the statute upon which it was based to be "in derogation of the individual's rights, guaranteed to him by the Constitution."

Other grounds for severance were urged but the court denied the motion and to the ruling each of the defendants excepted. In fortification of the motion for severance, at the selection of the jury, counsel, in succession for each defendant, challenged particular jurors peremptorily, expressing at the same time the acceptance by the other defendants of the challenged jurors. After ten such challenges had been made counsel interposed a peremptory challenge to other jurors in behalf of all of the defendants, stating as reasons that they "collectively" were not "bound by what their co-defendants may have done with respect to any particular juror, and that, therefore, they are still within their rights." The court denied the challenge, ruling that under the provisions of the act of Congress "all the defendants will be deemed a single party,

and ten challenges having been exercised in the aggregate, the right of challenge is exhausted."

Defendants excepted and the trial proceeded resulting in a verdict as follows: Schaefer and Vogel guilty on count nine only; Werner on counts one, two, four and nine; Darkow on one, three, five, six and nine; Lemke on count nine only.

Motions for arrest of judgment and for a new trial were made and overruled and defendants were sentenced to various terms of imprisonment.

The case is here upon writ of error directly to the District Court as involving constitutional questions.

It is conceded that the constitutionality of the Espionage Act has been sustained (*Sugarman* v. *United States*, 249 U. S. 182), but the constitutionality of the Act of March 3, 1911, c. 231, 36 Stat. 1166, § 287, by which several defendants may be treated as one party for the purpose of peremptory challenges, is attacked. Its constitutionality is established by *Stilson* v. *United States*, 250 U. S. 583.

The other assignments of error are: (1) The Government failed to prove the charge of making false statements as the same was made in the indictment and that therefore the court erred in refusing to instruct the jury to acquit upon the counts charging the offense. (2) "In passing upon the question of falsity of the despatches as published by the appellants and in passing upon any other questions which are a matter of public knowledge and general information" the court erred in instructing the jury that they had "the right to call upon the fund of general information which" was in their "keeping." (3) The court erred in refusing to instruct the jury to render a verdict of not guilty upon all of the counts in case of each of the defendants.

Assignments one and three may be considered together. They both depend upon an appreciation of the evidence

although assignment one is more particular as to the offense charged. But neither can be discussed without a review of the evidence and a detailed estimation of its strength, direct and inferential. That, however, is impossible as the evidence occupies over three hundred pages of the record and counsel have not given us an analysis or compendium of it, but have thrust upon us a transcript of the stenographer's notes of the trial which, counsel for the Government aptly says "presents" of the case "a picture of a certain sort, but it is a picture which is constantly out of focus, being either larger than the reality or smaller." However, we have accepted the labor it imposed and have considered the parts of the evidence in their proper proportions and relation and brought them to an intelligible focus, and are of opinion that the court rightfully refused the requested instructions except as to the defendants Schaefer and Vogel. As to them we do not think that there was substantial evidence to sustain the conviction. They were acquitted, we have seen, of all the individual and active offenses, and found guilty only on the ninth count—the charge of conspiracy.

The second assignment of error is somewhat confusedly expressed. It, however, presents an exception to the charge of the court as to what the jurors were entitled to consider as matters of public knowledge and general information. Counsel apparently urge against the charge that it submitted all the accusations of the indictment to the proof of the public knowledge and general information that the jurors possessed. The charge is not open to the contention, and, as discussion is precluded except through a consideration of the instructions in their entirety, we answer the contention by a simple declaration of dissent from it based, however, we may say, on a consideration of the instructions as a whole not in fragments detached and isolated from their explanations and qualifications. Counsel at the trial attempted

to assign to the charge the generality they now assert and it was rejected.

It is difficult to reach or consider the particulars of counsels' contention, the foundation of which seems to be that the indictment charged the falsification of the "despatches," and that, therefore, the Government must prove the falsification of them. What counsel mean by "falsification," is not easy to represent, they conceding there was proof that "the articles which were published differed from the articles in the papers from which they were copied," but contending no evidence was offered of what was contained in the original despatches of which the publications purported to be copies. And again counsel say "the falsity, as it has been called, which was proven against the defendants was that the articles which were published differed from the articles in the papers from which they were copied." The charge and proof, therefore, were of alterations—giving the "despatches" by a change or characterization a meaning that they did not originally bear—a meaning that weakened the spirit of recruiting and destroyed or lessened that zeal and animation necessary or helpful to raise and operate our armies in the then pending war. And there could be no more powerful or effective instruments of evil than two German newspapers organized and conducted as these papers were organized and conducted.

Such being the situation and the defendants having testified in their own behalf, and having opportunity of explanation of the changes they made of the articles which they copied, the court instructed the jury as follows: "In passing upon this question of falsity and in passing upon this question of intent and in passing upon, of course, the question of whether or not we are at war, you are permitted to use your general knowledge. I will withdraw the reference to 'intent,' but in passing upon the question of the falsity of these publications, in passing upon the ques-

tion whether we are at war, and in passing upon any other questions which are in like manner a matter of public knowledge and of general information, you have the right to call upon the fund of general information which is in your keeping."

The criticism counsel make of the charge is that "without any proof whatsoever, he [the judge] permitted them [the jury] to apply their general knowledge in determining whether the despatches published by the defendants contained false statements." Indeed counsel go further, and insist that the charge "gave to the jury an unlimited right to use any general information at their disposal in reaching their verdict." The charge itself refutes such sweeping characterization. Nor is it justified. The court said, "The real offense with which these defendants are charged is in putting out these false statements. They received them from a source. That source purported to be the report of a despatch, and the evidence in this case would seem to direct your minds in at least some of these instances, perhaps in many of them, to just where the report of the despatch appeared. They took that report as it came to them, and the charge is, in plain words, that they garbled it, sometimes by adding something to it and sometimes by leaving things out and sometimes by a change of the words. But the substantial thing which you are to pass upon is, was the report or statement that they put out false? Was it wilfully and knowingly false? Was it put out thus falsified with the intent to promote the success of the enemies of the United States." In other words the minds of the jurors were directed to the gist of the case which was despatches received and then changed to express falsehood to the detriment of the success of the United States, and the fact and effect of change the jurors might judge of from the testimony as presented and "from the fund of general information which" was in their "keeping." That is, from the fact of the source

from which the despatches were received, from the fact of war and what was necessary for its spirited and effective conduct and how far a false cast to the despatches received was depressing or detrimental to patriotic ardor. See *Stilson* v. *United States, supra.*

This disposes of the case on the exceptions which are argued. Exceptions one and two are specific and we have discussed them. Exception three is general and involves not only the points we have discussed and selected by counsel for discussion, but involves besides every other objection to the instructions and the sufficiency of the evidence, in all the aspects they can be viewed and estimated.

And as being within its comprehension we are confronted with a contention that the indictment and conviction are violative of the freedom of speech and of the press protected by the Constitution of the United States. The contention is a serious one and, in its justification, it is urged that the power of Congress to interfere with the freedom of speech and of the press must be judged by an exercise of reason on the circumstances. Therefore, in justice to the tribunal below, indeed to ourselves, we must give attention to the contention.

It is not very susceptible of measurement. It is difficult to separate in view of the contentions that are made a judgment of the law from a judgment of conviction under the law and keep free from confusing considerations. Free speech is not an absolute right and when it or any right becomes wrong by excess is somewhat elusive of definition. However, some admissions may be made. That freedom of speech and of the press are elements of liberty all will acclaim. Indeed they are so intimate to liberty in every one's convictions—we may say feelings—that there is an instinctive and instant revolt from any limitation of them either by law or a charge under the law, and judgment must be summoned against the impulse that might con-

demn a limitation without consideration of its propriety. But notwithstanding this instant jealousy of any limitation of speech or of the press there is adduced an instance of oppression by the Government, and, it is said, to hold that publications such as those in this case "can be suppressed as false reports, subjects to new perils the constitutional liberty of the press, already seriously curtailed in practice under powers assumed to have been conferred upon the Postal Authorities."

If there be such practice this case is not concerned with it. The assertion of its existence, therefore, we are not called upon to consider, as there is nothing before us to justify it. Therefore, putting it aside and keeping free from exaggerations, and alarms prompted by an imagination of improbable conditions, we bring this case, as it should be brought, like other criminal cases, to no other scrutiny or submission than to the sedate and guiding principles of criminal justice. And this was the effort of the trial court and was impressed on the jury.

The court drew the attention of the jury to "the features which gave importance" to the case but admonished it that they brought a challenge to a sense of duty and a sense of justice and that while the enforcement of any law made a "strong call" upon court and jury it could not "override the obligation of the other call, which is to make sure that no man is found guilty of a crime unless the evidence points to his guilt with the degree of certainty which the law requires."

Again, and we quote the words of the court, "No people is fit to be self-governed whose juries, chosen from among the great body of the people, cannot give due consideration to cases of this kind, and who cannot give to any defendant a fair and impartial trial, and render a just verdict. I know of no greater service an American citizen can perform for his country than to manifest by his attitude in cases of this kind that we are a people who

are governed by law, and who follow unswervingly that sense of justice which we should follow. Calling up just that spirit of justice, and breathing its very atmosphere, let us go to a consideration of the real merits of this case."

Did the admonition fulfill the duty of the court or should the court, as it is intimated, have taken the case from the jury? To do so is sometimes the duty of a court, but it is to be remembered a jury is a tribunal constituted by law as the court is, its function has as definite sanction as that of the court, and it alone is charged with the consideration and decision of the facts of a case. And the duty is of such value as to have been considered worthy of constitutional provision and safeguard. See *Capital Traction Co.* v. *Hof*, 174 U. S. 1.

If it be said this comment is but the expression of commonplaces, we reply that commonplaces are sometimes necessary to be brought forward lest earnestness or interest disregard them and urge too far the supervising power of the court, which, we repeat, is subordinate to that of the jury on questions of fact and certainly "a rule of reason" cannot be asserted for it upon a mere difference in judgment. All the principles and practices of the law are the other way. May such rule be urged in an appellate court against the concurrence of court and jury in the trial court; or, if there be division in the appellate court, for which view may a satisfaction of the rule be asserted? Passing by presumptions that may be challenged, an answer in this case may be left to the facts. But first as to the law.

The indictment is based on the Espionage Act and that was addressed to the condition of war and its restraints are not excessive nor ambiguous.[1] We need not enumerate

[1] "Sec. 3. Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies and whoever,

them. They were directed against conduct—speech or writings—that was designed to obstruct the recruitment or enlistment service or to weaken or debase the spirit of our armies causing them, it might be, to operate to defeat and the immeasurable horror and calamity of it.

But simple as the law is, perilous to the country as disobedience to it was, offenders developed and when it was exerted against them challenged it to decision as a violation of the right of free speech assured by the Constitution of the United States. A curious spectacle was presented: that great ordinance of government and orderly liberty was invoked to justify the activities of anarchy or of the enemies of the United States, and by a strange perversion of its precepts it was adduced against itself. In other words and explicitly, though it empowered Congress to declare war and war is waged with armies, their formation (recruiting or enlisting) could be prevented or impeded, and the morale of the armies when formed could be weakened or debased by question or calumny of the motives of authority, and this could not be made a crime—that it was an impregnable attribute of free speech upon which no curb could be put. Verdicts and judgments of conviction were the reply to the challenge and when they were brought here our response to it was unhesitating and direct. We did more than reject the contention; we forestalled all shades of repetition of it including that in the case at bar. *Schenck* v. *United States*, 249 U. S. 47; *Frohwerk* v. *United States*, 249 U. S. 204; *Debs* v. *United States*, 249 U. S. 211; *Abrams* v. *United States*, 250 U. S. 616. That, however, though in some respects retrospect,

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when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States, shall be punished. . . ." [Act June 15, 1917, c. 30, 40 Stat. 217.]

is a pertinent introduction to the facts of the pending case.

The charges of the indictment were against certain articles or editorials in the newspapers published by defendants in German and intended to be circulated in families and read by persons who understood that language. The articles were adapted to the situation and, we may say, allusion and innuendo could be as effective as direct charge and "coarse or heavy humor" when accompanied by sneering headlines and derision of America's efforts could have evil influence. And such was the character of the article upon which count three of the indictment was based. It had the following headlines:

"Yankee Bluff.

"Professor Jenny Does Not Take the American Preparations for War Seriously.

"Ambassador Paige Assures England That We Will Send Ten Million Men."

The following, with some other comments, was in the body of the article: "The army of ten million and the hundred thousand airships which were to annihilate Germany, have proved to be American boasts, which will not stand washing. It is worthy of note how much the Yankees can yell their throats out without spraining their mouths. This is in accord with their spiritual quality. They enjoy a capacity for lying, which is able to conceal to a remarkable degree a lack of thought behind a superfluity of words." Coarse indeed, this was, and vulgar to us, but it was expected to produce, and, it may be, did produce a different effect upon its readers. To them its derisive contempt may have been truly descriptive of American feebleness and inability to combat Germany's prowess, and thereby chill and check the ardency of patriotism and make it despair of success and in hopelessness relax energy both in preparation and action. If it and the other articles, which we shall presently refer to,

had not that purpose what purpose had they? Were they the mere expression of peevish discontent, aimless, vapid and innocuous? We cannot so conclude. We must take them at their word, as the jury did, and ascribe to them a more active and sinister purpose. They were the publications of a newspaper, deliberately prepared, systematic, always of the same trend, more specific in some instances, it may be, than in others. Their effect or the persons affected could not be shown, nor was it necessary. The tendency of the articles and their efficacy were enough for offense—their "intent" and "attempt," for those are the words of the law, and to have required more would have made the law useless. It was passed in precaution. The incidence of its violation might not be immediately seen, evil appearing only in disaster, the result of the disloyalty engendered and the spirit of mutiny.

The article was preceded by one July 4, 1917, headed "For the Fourth of July," in which it was declared that "The Fourth of July celebration, which has long been an empty formality, will this year become a miserable farce." England was represented as the enemy of the United States, carrying a hostility watchful of opportunity from the time of the Revolution through all crises until the United States "had become so strong that nothing could be undertaken against them." And further, "The ruling classes of England have always despised and hated the United States, and today while they flatter them, they still cherish the same feeling toward them." The emphasis of a paragraph was given to the statement that "under Wilson's regime the United States" had "sprung to the side of England as its savior in time of need. They provided it with the means to carry on the war and when that wasn't enough, they sprang into the war themselves. History will sometime pronounce its judgment upon this."

The aid so asserted to have been rendered to England by President Wilson was represented to have been in

opposition to the wishes of the people expressed, "by the unwillingness of their [the United States'] young men to offer themselves as volunteers for the war. But it will not rest there. The call for peace will come from the masses and will demand to be heard. And the sooner the better. No blood has been shed yet, no hate or bitterness has yet arisen against Germany, who has never done this country any harm, but has sent millions of her sons for its upbuilding. The sooner the American people come to their senses and demand peace, the better and more honorable it will be for this country."

The animus of the article and the effect expected of it need no comment to display. It was followed, supplemented, we may say, and reinforced by another article July 7, 1917. It (the latter) had for headlines the words "The Failure of Recruiting," and recruiting failed, was its representation, notwithstanding an "advertising campaign was worked at high pressure" and "all sorts of means were tried to stir up patriotism." Its further declaration was that "Germany was represented as a violator of all human rights and all international law, yet all in vain. Neither the resounding praises nor the obviously false accusations against Germany were of any avail. The recruits did not materialize." The cause was represented to be "that the American, who certainly cannot be called a coward" did "not care to allow himself to be shot to satisfy British lust for the mastery of the world." And "the people instinctively recognize and feel" that "the pro-British policy of the Government,—is an error, which can bring nothing but injury upon this country." It was then added that "the nation therefore" was doing the only thing it could still do, "since its desires were not consulted at first." It refused "to take part."

The purpose is manifest, however the statements of the article may be estimated, whether as criminal means—violations of law, or the exercise of free speech and of the

press. And its statements were deliberate and wilfully false, the purpose being to represent that the war was not demanded by the people but was the result of the machinations of executive power, and thus to arouse resentment to it and what it would demand of ardor and effort. In final comment we may say that the article in effect justified the German aggressions.

We do not deem it necessary to adduce the other charges of the indictment. We may, however, refer to the plausibility of the excuse of the alteration of Senator LaFollette's speech and remark that it disappears when the speech is considered in connection with the articles that preceded and followed it. The alterations were, it is true, of two words only, but words of different import than those the Senator used. The Senator urged that the burden of taxation made necessary by the war be imposed upon those who might profit by the war in order to relieve those who might suffer by it and be brought to "bread lines." The article changed the words to "bread riots," that is changed the expression of acceptance of what might come as a consequence of the war, to turbulent resistance to it and thus giving the article the character of the others with a definite illustration of the opposition to the war by a Senator and his prophecy of a riotous protest by the people. It will be recalled that in other articles the antagonism of the people to the war was declared and in one of them it was said that the war was commenced "under Wilson's regime" and "without their [the people's] consent."

In conclusion we may add that there are in the record what are called "intent" articles which supplement and emphasize the charges of the indictment, and, it is to be remembered, that defendants were witnesses and had the opportunity of explanation, and to preclude any misapprehension of the German originals or defect in their translation. And the jury could judge of the defendants by their presence.

We have not deemed it necessary to consider the articles commented on with reference to the verdicts; the *Abrams Case* has made it unnecessary. On any count of which any defendant was convicted he could have been sentenced to twenty years' imprisonment. The highest sentence on any defendant was five years.

Further comment is unnecessary and our conclusion is that the judgment must be affirmed as to Werner, Darkow and Lemke but reversed as to Schaefer and Vogel, as to them the case is remanded for further proceedings in accordance with this opinion.

So ordered.

MR. JUSTICE BRANDEIS delivered the following opinion in which MR. JUSTICE HOLMES concurred.

With the opinion and decision of this court reversing the judgment against Schaefer and Vogel on the ground that there was no evidence legally connecting them with the publication I concur fully. But I am of opinion that the judgments against the other three defendants should also be reversed because either the demurrers to the several counts should have been sustained, or a verdict should have been directed for each defendant on all of the counts.

The extent to which Congress may, under the Constitution, interfere with free speech was in *Schenck* v. *United States*, 249 U. S. 47, 52, declared by a unanimous court to be this:—"The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

This is a rule of reason. Correctly applied, it will preserve the right of free speech both from suppression by tyrannous, well-meaning majorities and from abuse by irresponsible, fanatical minorities. Like many other rules for human conduct, it can be applied correctly only by the

exercise of good judgment; and to the exercise of good judgment, calmness is, in times of deep feeling and on subjects which excite passion, as essential as fearlessness and honesty. The question whether in a particular instance the words spoken or written fall within the permissible curtailment of free speech is, under the rule enunciated by this court, one of degree. And because it is a question of degree the field in which the jury may exercise its judgment is, necessarily, a wide one. But its field is not unlimited. The trial provided for is one by judge *and* jury; and the judge may not abdicate his function. If the words were of such a nature and were used under such circumstances that men, judging in calmness, could not reasonably say that they created a clear and present danger that they would bring about the evil which Congress sought and had a right to prevent, then it is the duty of the trial judge to withdraw the case from the consideration of the jury; and if he fails to do so, it is the duty of the appellate court to correct the error. In my opinion, no jury acting in calmness could reasonably say that any of the publications set forth in the indictment was of such a character or was made under such circumstances as to create a clear and present danger either that they would obstruct recruiting or that they would promote the success of the enemies of the United States. That they could have interfered with the military or naval forces of the United States or have caused insubordination, disloyalty, mutiny, or refusal of duty in its military or naval services was not even suggested; and there was no evidence of conspiracy except the coöperation of editors and business manager in issuing the publications complained of.

The nature and possible effect of a writing cannot be properly determined by culling here and there a sentence and presenting it separated from the context. In making such determination, it should be read as a whole; at least if it is short like these news items and editorials. Some-

times it is necessary to consider, in connection with it, other evidence which may enlarge or otherwise control its meaning or which may show that it was circulated under circumstances which gave it a peculiar significance or effect. But no such evidence was introduced by the Government. The writings here in question must speak for themselves. Fifteen publications were set forth in the indictment; and others were introduced in evidence. To reproduce all of them would unduly prolong this opinion. Four are selected which will illustrate the several contentions of the Government. That at least three of these four were deemed by it of special importance is shown by the fact that each of the three was made the subject of a separate count.

First: There were convictions on three counts of wilfully obstructing the recruiting and enlistment service. The conviction of the news editor of so obstructing rested wholly upon his having inserted the following reprint from a Berlin paper in the Tageblatt:

"Yankee Bluff.

"Professor Jenny Does Not Take the American Preparations for War Seriously.

"Ambassador Paige Assures England That We Will Send Ten Million Men.

"London, Aug. 5.—Ambassador Paige followed Lloyd George at Guild Hall in Plymouth, with a great speech. He declares there that the differences between England and the United States in former times were only of a superficial nature, and that both peoples are now united inseparably, to fight for freedom and against the Hydra of militarism. He assures his hearers that the United States is ready for all sacrifices in order to end the war victoriously, and that if necessary it will send ten million men to France."

"Berlin, Aug. 5.—In the 'Täglishe Rundschau,' Professor Jenny writes under the title 'Americanism' as

follows:—Americans think in exaggerations and talk in superlatives. Even Ambassador Andrew White in his Memoirs falls into superlatives in comparatively insignificant cases. He speaks of them as the most important events of his life and maintains that certain people have made an indelible impression on him, whom others consider to be ordinary average men.

"The army of ten million men has dwindled to a voluntary army of 120,000; while the new conscripted army of 565,000 will not even be ready to begin drilling for the front in six months. The hundred thousand air ships were reduced to 20,000 and then to 3,000, which the Americans hope to have ready for next summer if they find the right model for them. As for the thousands of ships that were to be sent across the ocean, America, six months after the declaration of war, has not yet decided whether they are to be wood or steel ships; so far not even the keel of one ship has been laid. It amounts to this that now when the Americans can scrape some tonnage together, the troops are not ready, and when they have the troops ready, the tonnage will not be available.

"The army of ten million and the hundred thousand airships which were to annihilate Germany, have proved to be American boasts which will not stand washing. It is worthy to note how much the Yankees can yell their throats out without spraining their mouths. This is in accord with their spiritual quality. They enjoy a capacity for lying, which is able to conceal to a remarkable degree a lack of thought behind a superfluity of words.

"But some fine day, if they do not stop their boasting and bluffing, it might happen to them that they get the lockjaw, for which there is no better relief than a good box on the ear. Moreover it is not to be assumed that the Americans are really in earnest with the war. No one would be surprised if they found a thousand and one excuses for taking no active part in the European War."

It is not apparent on a reading of this article—which is not unlike many reprints from the press of Germany to which our patriotic societies gave circulation in order to arouse the American fighting spirit—how it could rationally be held to tend even remotely or indirectly to obstruct recruiting. But as this court has declared and as Professor Chafee has shown in his "Freedom of Speech in War Time," 32 Harvard Law Review, 932, 963, the test to be applied—as in the case of criminal attempts and incitements—is not the remote or possible effect. There must be the clear and present danger. Certainly men judging in calmness and with this test presented to them could not reasonably have said that this coarse and heavy humor immediately threatened the success of recruiting. Compare *United States* v. *Hall*, 248 Fed. Rep. 150; *United States* v. *Schutte*, 252 Fed. Rep. 212; *Von Bank* v. *United States*, 253 Fed. Rep. 641; *Balbas* v. *United States*, 257 Fed. Rep. 17; *Sandberg* v. *United States*, 257 Fed. Rep. 643; *Kammann* v. *United States*, 259 Fed. Rep. 192; *Wolf* v. *United States*, 259 Fed. Rep. 388, 391–2.

Second: There were convictions on three counts of wilfully conveying false reports and statements with intent to promote the success of the enemies of the United States. The Tageblatt, like many of the smaller newspapers, was without a foreign or a national news service of any kind and did not purport to have any. It took such news usually from items appearing in some other paper theretofore published in the German or the English language. It did not in any way indicate the source of its news. The item, if taken from the English press, was of course translated. Sometimes it was copied in full; sometimes in part only; and sometimes it was rewritten; or editorial comment was added. The Government did not attempt to prove that any statement made in any of the news items published in the Tageblatt was false in fact. Its evidence,

under each count, was limited to showing that the item as published therein varied in some particular from the item as it appeared in the paper from which it had been copied; and no attempt was made to prove the original despatch to the latter paper. The Government contended that solely because of variation from the item copied it was a false report, although the item in the Tageblatt did not purport to reproduce an item from another paper, and in no way indicated the source of the news. Each of the three items following illustrates a different method by which the variation was effected:

1. The publication for which the news editor was convicted on the fifth count by reason of an addition to the item copied:

(The translation of the Tageblatt item as set forth in the indictment.)

"Further Economies.

"Amsterdam, September 2.—It has been reported here that permission to export the wheat and flour on the ships held in New York has been refused. Information to this effect is contained in an official proclamation of the latest cut in bread rations and of the need for economy which has reached the civil authorities: This document says: 'We know now with certainty that we cannot count upon the import of breadstuffs from America and that we must strive to make our own provisions suffice. In initiated circles it is said that under no conditions can the new American proposal be accepted, and that the foodstuffs may rot before the ships will be unloaded.'"

(The original Tageblatt item as set forth in the indictment.)

Weitere Einſchränkungen.

Amſterdam, 2. Sept. Es wird hier gemeldet, daß der Export von Weizen und Mehl auf den in New York zurückgehaltenen Schiffen verweigert wurde. Eine diesbezügliche Mittheilung iſt in einer amtlichen Erklärung der jüngſten Brotrationen-Verringerung und der Aufforderung zur Einſchränkung enthalten, welche den Gemeindebehörden zuging. In derſelben heißt es: „Wir wiſſen nun beſtimmt, daß wir auf die Einfuhr von Brotgetreide aus Amerika nicht rechnen können, und daß wir uns bemühen müſſen, mit den eigenen Vorräthen auszukommen." — In eingeweihten Kreiſen heißt es, daß man auf den neuen Vorſchlag Amerikas unter keinen Umſtänden eingehen und das Getreide eher verfaulen laſſen wird, als die Schiffe auszuladen.

The falsification charged is said to consist in having added to the despatch which was copied from the Staatszeitung the words: "In initiated circles it is said that under no conditions can the new American proposal be accepted, and that the foodstuffs may rot before the ships will be unloaded." But it is obvious, upon comparing the English translation with the German original, that the defendant did no such thing. What occurred was this: The sentence referred to was not made a part of the despatch in the Tageblatt. It followed the despatch; it was not within the quotation marks; and was separated from it by a dash,—a usual method of indicating that what follows is comment or an addition made by the editor. In the English translation, as set forth in the indictment, this sentence, through some inadvertence of the Government's translator or draftsman, was included as part of the despatch and brought with the quotation therein. Evidently both the jury and the trial judge failed to examine the German original.

2. One of the publications for which the news editor was convicted on the first count because of an omission from the item copied:

"Ready for the Fray?

"St. Petersburg, September 7th.—The Russian Baltic Fleet will defend Kronstadt and Reval, and through them the Russian capital itself. The commanders of the two fortresses have made this report to the provisional government. A large part of the Baltic fleet was under control of the Maximalists, who hitherto have opposed Kerensky. The commanders of Sveaborg and Helsingfors have also telegraphed their assurance to the government that the Baltic fleet has expressed its willingness to offer desperate resistance, in case the Germans should make a naval attack upon the strongholds between Riga and the capital.

"Investigation of the Fall of Riga.

"The Russians devastated the land through which

they retreated from Riga, in order to impede the German advance. Roads were broken up, bridges destroyed and provisions burned. A special commission has been set up by Premier Kerensky to investigate the fall of Riga. As far as reports have so far been permitted to appear, it is established that only two regiments gave up their positions without fighting, and the others offered the attacking Germans bold resistance. The retreat was carried out in an orderly manner, in spite of pursuit by the German armies. The first of these, advancing along the coast in the region of Dunaburg, is apparently endeavoring to reach Berna, on the Gulf of Riga. The second German army is pressing along the Pskoff road to execute a turning movement, while the third is energetically pushing in a northeasterly direction against Ostroff. The Germans are showing signs of nervousness in advancing through this marshy lake-strewn country, which are increased by the Russian resistance."

The falsification here is said to consist in the omission from the end of the first paragraph of the following sentence which appeared in the paper from which the item was taken: "From this it can be concluded that the fall of Riga has united the opposing political factions in Russia."

3. The publication for which the news editor was convicted on the sixth count because of the change of a word in the item copied:

"War of the Rich.

"Senator La Follette Thinks They Ought Not to Make a Cent of Profit.

"Hot Fight in the Senate Over Increased Taxation of War Profits.

"Washington, August 21.—Taxation of riches in such a measure that the burdens of the cost of the war will be taken from the shoulders of the poor man was recommended today in the Senate by Senator La Follette in a long speech. He declared that the proposed two billion

dollar bill as drawn up in the Senate's Committee on Financial Affairs is impractical because it covers less than seventeen per cent. of the war expenses of the first year and from this would result the necessity of issuing bonds for billions of dollars. Bonds, however, mean the same as an increased cost of living, and one of the consequences would be that next winter bread riots could be expected in the big cities. He recommended the acceptance of amendments by which further taxation of large incomes and big war profits would be effected, which would bring the total amount of the bill to about $3,500,000,000.

"Senator La Follette declared that wealth had never, in any war, offered itself on the altar of patriotism. He attacked the proposed issue of bonds and prophesied that the Liberty Bonds would eventually find their way into the hands of the rich, if they had not already done so. 'But,' he continued, 'this is not all, for war, and principally the sale of bonds, leads inevitably to inflation. This raises prices and through that the cost of living for the great mass of people is raised. Reason and experience teach us that the policy of financing a war for the most part by borrowing the necessary money, is in itself one of the worst financial burdens that war imposes upon men. But wealth is always a powerful factor in the Government. It fattens on war loans and war contracts as well as on speculation, which is not wanting in time of war. Upon these grounds the rich are always in favor of war, and when they have succeeded in bringing on a war, they are often powerful enough with ministers of war and parliaments and congresses to force the maximum of loans and to reduce taxation to a minimum by every possible intrigue and argument.

"'And that is the case with us in this war. Within thirty days after the declaration of war wealth had precipitated us into bond issues of unheard of size. Morgan came to the city, the press urged it, the administration

commanded it, and Congress authorized the issue of five billions of untaxable Government bonds and two billions of interest bearing Treasury notes.'

"Senator La Follette attacked the program of the administration under which a new tax measure will be introduced next winter. 'Of what use is the postponement?' he asked, 'Whose interest is served if taxes on incomes and war profits are kept down and the masses are delivered over to the money lenders as security for an enormous and wickedly disproportionate issue of bonds?' He insisted that the policy of financing the war should at once be decided upon.

"'To-day the way is clear,' he explained, 'hesitation to provide now for heavy taxes would not be a mistake, it would be something worse.'

"Senator La Follette reviewed the financial history of previous American wars. 'We must not repeat such mistakes,' he said, 'it would be blind madness if we did not learn from the mistakes that were made in previous wars. A mistake that we make now may be fatal. It would certainly cost us untold millions of dollars and thousands upon thousands of lives, as by it we would prolong the war unnecessarily.

"'As long as one man can be found who makes war profits, I am in favor of taking away in taxes such part of those profits as the Government requires, and the Government needs the whole of such profits before adding a penny to the taxation of people who are already staggering under heavy burdens by reason of the higher prices occasioned by the war. This may be a new principle in war financing, but it is the least that one can do for the mass of the people, and it is considerably less than simple justice would demand for them.

"'The great mass of the people bear the costs of war, although they may not be directly taxed one dollar. The great mass of the people pay in higher prices and pro-

longed hours of labor. They pay in service, not alone on the battle field, but wherever men and women work hard all day long. But more than all this, they pay the cost of war with their blood, and their lives, and what is the greatest sacrifice of all, with the blood and lives of their loved ones.

"'If bread lines are a familiar sight in every city in the land, as they undoubtedly will be if the present prices of the most necessary supplies for living hold firm during the coming winter, if cold and hunger become daily guests with thousands of families, who, until now, have only known comfort, a condition which is certain to come about during the coming winter months, if no help against the present level of prices can be found, then it is my opinion that the members of this Congress will do little enough if they come to realize that they are adding to the privations and pains of the mass of the people if they hesitate to place even a fairly moderate portion of the financial burden upon the rich.'"

Falsification is charged solely because the word "Brotriots" (translated as "bread-riots") was used in the twelfth line of the article instead of the word "Brotreihen" (translated as "breadlines").

The act punishes the wilful making and conveying of "false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies." Congress sought thereby to protect the American people from being wilfully misled to the detriment of their cause by one actuated by the intention to further the cause of the enemy. Wilfully untrue statements which might mislead the people as to the financial condition of the Government and thereby embarrass it; as to the adequacy of the preparations for war or the support of the forces; as to the sufficiency of the food supply; or wilfully untrue statements or reports of military operations

which might mislead public opinion as to the competency of the army or navy or its leaders (See "The Relation Between the Army and the Press in War Time," War College Publication, 1916); or wilfully untrue statements or reports which might mislead officials in the execution of the law, or military authorities in the disposition of the forces. Such is the kind of false statement and the only kind which, under any rational construction, is made criminal by the act. Could the military and naval forces of the United States conceivably have been interfered with or the success of the enemy conceivably have been promoted by any of the three publications set forth above? Surely, neither the addition to the first, nor the omission from the second constituted the making of a false statement or report. The mistranslation of "breadlines" in one passage of the third, if it can be deemed a false report, obviously could not have promoted the success of our enemies. The other publications set out in the indictment were likewise impotent to produce the evil against which the statute aimed.

Darkow, the news editor, and Werner, the editor, were each sentenced to five years in the penitentiary; Lemke, the business manager, to two years. The jury which found men guilty for publishing news items or editorials like those here in question must have supposed it to be within their province to condemn men not merely for disloyal acts but for a disloyal heart; provided only that the disloyal heart was evidenced by some utterance. To prosecute men for such publications reminds of the days when men were hanged for constructive treason. And, indeed, the jury may well have believed from the charge that the Espionage Act had in effect restored the crime of constructive treason.[1] To hold that such harmless addi-

[1] The presiding judge in charging the jury said of the act: " . . . its general purpose is to protect . . . our military strength and efficiency, to protect ourselves against anything which would promote

tions to or omissions from news items, and such impotent expressions of editorial opinion, as were shown here, can afford the basis even of a prosecution will doubtless discourage criticism of the policies of the Government. To hold that such publications can be suppressed as false reports, subjects to new perils the constitutional liberty of the press, already seriously curtailed in practice under powers assumed to have been conferred upon the postal authorities. Nor will this grave danger end with the pass-

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the success of our enemies by undermining our morale, lessening our will to win, or, as it is commonly expressed, our will to conquer . . . creating divisions among our people. . . .

"These acts which are prohibited are treasonable in the sense in which that word is used, in the common speech of the people. Indeed, they may constitute legal treason as defined in some jurisdictions, but they are not treason against the United States, for the simple reason that there is a provision in our Constitution, (which, of course, the Acts of Congress follow), that treason against the United States,—you will observe that it does not say 'treason generally,' but treason against the United States shall consist only in making war upon them, or in adhering to their enemies, giving them aid and comfort, and there is another provision to the effect that no person can be convicted of the crime of treason unless there are two witnesses to the same overt act, making, as you will see, it perfectly clear that mere words, whether published or not, as long as they are mere words, do not constitute the crime of treason, but they must be words uttered and published under such circumstances as to become deeds or acts in themselves, as 'words' may be. So that words, unless there is something to which they may attach and unless the direct, natural, and reasonably to be expected consequences of them would be to give aid and comfort to the enemy, do not constitute the crime of treason. Every man will observe, however, that even mere words may be fraught with consequences which, although too remote to constitute the crime of treason, may nevertheless be words which are fraught with most awful consequences . . . and, therefore, it is properly within the province of the law to prohibit . . . and make it a crime even to utter them. In substance, that is what this law does. Congress could not call some mere words treason, because the Constitution prohibits it, but there is no constitutional limitation on the power of Congress to declare those things a crime against the law which Congress has done in this act. . . ."

ing of the war. The constitutional right of free speech has been declared to be the same in peace and in war. In peace, too, men may differ widely as to what loyalty to our country demands; and an intolerant majority, swayed by passion or by fear, may be prone in the future, as it has often been in the past, to stamp as disloyal opinions with which it disagrees. Convictions such as these, besides abridging freedom of speech, threaten freedom of thought and of belief.

MR. JUSTICE CLARKE, dissenting.

On a single indictment, containing nine counts, five men, Peter Schaefer, Paul Vogel, Louis Werner, Martin Darkow and Herman Lemke, were convicted and sentenced to the penitentiary for printing seventeen articles in a German language newspaper, published at Philadelphia, between June 24 and September 17, 1917.

Schaefer was president and Vogel was treasurer of the company which published the paper, but their entire time was given to the service of labor unions, which had loaned money to the company, and they were given these official positions for the purpose of enabling them to keep informed as to its business progress and the disposition of its earnings.

All the members of the court agree that there was no substantial evidence that Schaefer or Vogel were in any respect responsible for the publications complained of, and that as to them the judgment must be reversed.

In this conclusion I cordially concur, but I go further and am clear that a similar reversal should be entered as to Herman Lemke, who was convicted, as Schaefer and Vogel were, on only one of the nine counts of the indictment.

Lemke was given the sounding title of "business manager," but, as a matter of fact, he was a mere bookkeeper,

of a small business, with very limited authority. The newspaper led a precarious financial existence and Lemke's duties were restricted to making out and collecting bills for advertising and circulation, to paying some bills and to turning over the remainder of the money, if any remained, to the treasurer, Vogel. Lemke himself and two or three other witnesses testified that he had nothing whatever to do with deciding what should be published in the newspaper, and that he never wrote for it excepting that when a reporter was ill he occasionally reported a concert. There was no evidence to the contrary.

On such a record it is very clear that a man holding such a position as Lemke held, could not, and did not, have anything to do with determining what should be published in the paper. He had no more to do with the policy of the paper than a porter would have with determining the policy of a railroad company. In my judgment the failure of proof as to Lemke was as complete as it was as to Schaefer and Vogel and I cannot share in permitting him to be imprisoned in the penitentiary for a year for publications which he was powerless either to authorize or prevent.

A different case is made against Werner and Darkow. Werner was a writer of political editorials for the paper, and Darkow was the news editor. Werner was found guilty on four counts and not guilty on five. Darkow was found guilty on five counts and not guilty on four.

Two of the articles written, or caused to be published, by Werner, and one, or perhaps two, of those caused to be published by Darkow, were of a character such that they might have been fairly convicted of violating the act under which they were indicted, but none of these articles was included in count one, and only one of them was included in count nine, and with respect to this one article in count nine Werner was found not guilty when charged with its publication in count three. The charge of the court did

not distinguish between these really offending publications and the many innocent ones the publication of which was charged to be criminal, with the result, that it failed to give such direction to the deliberations of the jury as I think every person accused of crime is entitled to have given.

The denial of separate motions to instruct the jury to render a verdict of not guilty as to Werner and Darkow on the first and ninth counts seems to me to constitute error so fundamental and pervasive as to render the entire trial unfair and unjust, to a degree which requires the granting of a new trial to each of them.

I shall state my reasons for this conclusion as briefly as I may.

The first count charges that the defendants did "knowingly, wilfully and unlawfully make and convey false reports and statements, with intent to promote the success of the enemies of the United States, to wit, the said Imperial German Government."

The indictment and the record in general make it very plain that the District Attorney, in framing the indictment, and during the trial, believed that the statute prohibiting the making and conveying of a false report and statement would be violated by the publication of any article which had been published elsewhere if, in the publication, it was changed, either by addition or omission, and this without any proof that the original publication was true and the second publication false, and seemingly without regard to whether or not the publication had any tendency to promote the success of the enemy. The trial court accepted this construction of the statute and submitted the first count to the jury on this theory of the law.

I cannot doubt that this was gravely erroneous, for the real purpose of the statute is to punish, published, not suppressed, reports and statements, whether original or

copies, made with the intent to promote the success, and which were of a nature reasonably likely to promote the success, of the enemy of the United States—by discouraging our own people or encouraging the enemy.

The first of the thirteen false reports which it is charged in the first count were published, is typical of the others and will sufficiently explain my position.

It purported to be a despatch from London and translated reads as follows:

"The Crisis.

"Is Advancing in Russia with Rapid Strides. The Coalition Government Will Probably Not Last Long.

"Its Position in Foreign Affairs Is Condemned.

"London, June 23.—The Petrograd correspondent of the Chronicle telegraphs today that a great crisis is in progress in Russia. (By that he means apparently that the unstable and weak coalition government will soon be got rid of. It seems to obey unwillingly the instructions of the Workmen's and Soldiers' Council to request the allies to revise their war aims. The workmen will not stand for this much longer. It is highly significant too that not a word has been reported for four days about the great general congress of the Workmen's and Soldiers' delegates; apparently because its behavior does not please the allies.)

"The correspondent of the Chronicle quotes an extract from Maxim Gorky's newspaper 'New Life' which says that people all over the world are to understand that Russia rejects the aggressive war aims of the allies. The correspondent sees a sign in this that the socialists of Russia will not wait much longer."

Obviously there is nothing in this, as published, which could either discourage Americans or encourage the German enemy, and the indictment does not claim that there is. That which the indictment charges makes the publication criminally false is that there was omitted from it "a

proposal by Maxim Gorky that Russia wage a separate war against Germany." Thus the charge is that the crime consisted not in publishing something which tended to encourage German enemies, but in omitting to publish something which it is conceived might have discouraged them. It is not charged that what was printed was harmful but that something which was unfavorable to Germany was not published.

This is characteristic of all but two of the thirteen articles in the first count, and to these, additions were made so inconsequential as in my judgment not to deserve notice.

It seems to me very clear that the statute could not be violated by publishing reports and statements harmless in themselves and which were not shown to be false, merely because they had been published in a different form in another paper,—and this is the extent to which the proof in this case goes as to all of the publications complained of in the first count. Without more discussion, I am so clear that the requested instruction for the defendants Werner and Darkow as to the first count should have been granted, that I think the refusal of it entitles them to a new trial.

The ninth count consists of a charge of conspiracy on the part of the entire five defendants to wilfully make and convey false reports and false statements with intent to interfere with the operation and success of the military and naval forces of the United States; with wilfully causing and attempting to cause insubordination, disloyalty and mutiny in the military and naval forces of the United States, and with wilfully obstructing the recruiting and enlisting service of the United States by the publication of various articles referred to, but not quoted, in the indictment. With a single exception these articles are the same as those incorporated in the first count and this exception purported to be a despatch from the Hague, giving the

reasons for the unrest in Germany, from which it is charged there was omitted a statement that one of the reasons for such unrest was the failure of the submarine campaign carried on by the German Government. Even in this ninth count it is not charged that the publications as actually made were harmful but it proceeds, as does the first count, upon the implication that they might have been more discouraging than they were to the German enemy if the omitted statements had been incorporated into them, and that for this reason they violated the statute. In other words, it comes to this, that the ninth count charges as criminal, not a conspiracy to publish the articles complained of, which were innocent, but a conspiracy to suppress certain statements which were published in other newspapers in connection with or as a part of the published articles and which it is argued might have been harmful to the German cause if they had been published. It is impossible for me to think that the statute could be violated in any such manner.

It was clearly proved that the newspaper was so poor financially that it was not able to have telegraphic service of any character and, morning paper that it was, it filled its news columns with clippings from the evening papers of the night before and from early editions of the morning papers when it could procure them before its hour for going to press. It did not print nearly as many columns as the newspapers from which it obtained its news, and for this reason it was necessarily obliged to cut and condense, both headlines and the body of the articles. In several of the instances complained of these exigencies of publication plainly caused the omissions complained of.

Convinced as I am that the requested instructions to the jury that Werner and Darkow could not be found guilty on the first and ninth counts should have been given and that the charge of the court was so utterly unadapted to the case as it would have been if they had been

given, as to be valueless or worse as a direction to the jury, I think that the least that can be done, in the interest of the orderly administration of justice, is to grant a new trial and let a new jury, properly instructed, pass upon the case.

I cannot see, as my associates seem to see, that the disposition of this case involves a great peril either to the maintenance of law and order and governmental authority on the one hand, or to the freedom of the press on the other. To me it seems simply a case of flagrant mistrial, likely to result in disgrace and great injustice, probably in life imprisonment for two old men, because this court hesitates to exercise the power, which it undoubtedly possesses, to correct, in this calmer time, errors of law which would not have been committed but for the stress and strain of feeling prevailing in the early months of the late deplorable war.